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PROCEEDINGS
of
THE TRAVANCORE SRI MULAM ASSEMBLY.

OFFICIAL REPORT.

FIRST ASSEMBLY.

SEVENTH SESSION.

Thursday, the 16th July 1936/1st Karkadakam 1111.

The Assembly met again in the Victoria Jubilee Town Hall at Eleven of the clock with the Presiednt in the Chair.

LEGISLATIVE BUSINESS.

THE TRAVANCORE AGRICULTURISTS' RELIEF BILL.

Clause 34—(*contd*)

PRESIDENT: I see that, by common consent it was agreed that there should be no interpellations today. So, therefore, we will at once proceed with the discussion of the Bill. I find that, when the House adjourned last evening, Mr. Changanachery Paramesvaran Pillai was speaking. Does he wish to continue?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): Sir, before I continue my speech, I wish to bring to your notice the report of the proceedings of the last day published in the issue of a local daily referring to my speech this report says;

മി. ചങ്ങനാശേരി പരമേശ്വരൻപിള്ള അവതരിപ്പിച്ച ഭേദഗതിയിൽ പലിശയുടെ ശതമാനം ൫-ൽ നിന്ന ൪-ആക്കി കുറയ്ക്കണമെന്ന നിർദ്ദേശിച്ചിരുന്നു. പ്രസ്തുത ഭേദഗതിയെ അടിസ്ഥാനമാക്കി അദ്ദേഹം പ്രസ്താവിച്ചത് ൧൧൦൫-മുതൽ പലിശ കുറയ്ക്കണമെന്നു താൻ ആവശ്യപ്പെട്ടുന്നില്ലെന്നും എന്നാൽ റ്റ്രഷൻ നടപ്പാക്കുന്ന തീയതിമുതൽ മൂവർഷത്തേക്കു പലിശയുടെ നിരക്ക് കുറയ്ക്കണമെന്നുമാണ്.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): May I know the name of the news paper?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): The Malayali.

PRESIDENT: Is the honourable member reading from some newspaper?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): Yes. Sir. The substance of it is that Mr. Changanachery Paramesvaran Pillai proposed in his amendment that the rate of interest should be reduced from 6 to 4 per cent., but that retrospective effect should not be given to that reduction from 1105 and that he confined his amendment to interest for three years subsequent to the date

G. P. T. 107—350.

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of the commencement of this Regulation. Now, Sir, the members of this Assembly know that it is an absolutely inaccurate report. Such reports, I submit, should not be allowed to be published. I would not have drawn your attention, Sir, to this report but for the fact that it suggests something quite at variance with my amendment and such wrong statements are generally found in all newspaper reports. I submit that either the papers should publish the proceedings correctly or not at all.

PRESIDENT: I think the version which has been read out and which the honourable member is asserting, is in conflict with his real speech made on the floor of this House forces me to draw the attention of those gentlemen who represent the Press to be careful in reporting the proceedings. I quite appreciate that such inaccurate statements produce an impression on the public mind contrary to the actual facts. I take it that the *Malayali* is not represented here in the Press Gallery and yet we find that something has appeared in that newspaper. I will give this general warning to all the representatives of the newspapers and I will impress upon them the need for accurate publication of the proceedings of the House. If they cannot do that, they had better refrain from publishing the proceedings.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): Sir, yesterday I was saying that the contract entered into by the creditors with the agriculturist debtors for payment of interest at any rate higher than 4 per cent. has become impossible of performance owing to various causes. The fall in the prices of cocoanuts and cocoanut products, the fraud of companies dealing in pepper, overproduction in the case of rubber and such other special causes, coupled with the general economic depression, have tended to reduce the prices of agricultural produce to such an extent that it has become impossible for the debtors to meet fully the claims of their creditors.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Is that statement correct in regard to *all* the debtors?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): I am speaking generally of all the debtors. The economic depression is a general condition and it must affect all debtors alike. Similarly, I think the foreign competition in regard to copra and other cocoanut products must affect all cocoanut cultivators. So also, in the case of rubber, it must affect all rubber cultivators, and in the case of pepper too, it must affect all pepper cultivators. I cannot make any distinction at all in this matter. I submit, Sir, that there is an impression in certain quarters that, if a debtor is able to pay his debt by selling all the properties that he possesses then he needs no relief at all because in that case he is taken to be able to discharge his debt. I submit that that is not the way in which this question should be approached. The question is one of relief to the agriculturist class, and if

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as a matter of fact they are not able to meet their obligations fully from the proceeds of the lands owing to conditions, which are beyond their control and which came into existence long after the contract was entered into, they are entitled to relief to that extent, and they should not be compelled to sell off all their properties and be thrown into the street simply because the value of their properties as a whole might be sufficient to discharge their debts.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Is not the amendment restricted only to transactions which took place from 1105 ?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*) : My amendment is quite clear on that point and I do not think that I need answer the question. I submit that those conditions have made it impossible for the agriculturists to pay the interest, upon the loans taken by them, at a rate higher than 4 per cent. from the year 1105 when these conditions came into existence. If that is so, I submit that the sanctity of contractual obligations on which the creditors so much rely should be interpreted in favour of the debtors in regard to whom the contract has become impossible of performance. Therefore I submit the very sanctity of contractual obligations upon which the other side relies is in favour of relief being granted to the debtors. One great objection taken to this is that in the case of some bankers, they have, on the strength of the contract that they have entered into with the debtors, paid dividends and interest upon deposits made in the banks by the depositors at higher rates and it would be inequitable that they should be asked to suffer for that. This point, I submit, has been very fully discussed and very ably answered by the Agricultural Debt Redemption Committee at page 67 of their report. It is unnecessary for me to take up the time of the Assembly by reading it, as I presume all the members of the Assembly have read carefully that report as well as the measure now before the House.

Now, Sir, I may add one or two observations to what has already been stated by the committee. In the first place, I submit, Sir, that, if the existence of economic depression and other causes, which have tended to lower the prices of agricultural produce to a very great extent, is granted, it is but equitable that both parties should share the loss caused thereby. The loss should not be charged to the debtors alone. Secondly, I submit, Sir, that, so far as the bankers are concerned, agricultural debts form, if at all, only a very small part of their transactions. Their transactions are generally with traders and other people who have nothing to do with agricultural business. The bankers are generally very unwilling to lend money to agriculturists for the reason that it is very difficult to realise money from them without coercive processes and sale of land which leads to great delay, trouble, and expenditure. Therefore, the bankers rarely lend money to the agriculturists and their transactions therefore with the agriculturists form only a very very small part of their business. The loss that they will have to suffer on account of my amendment will be negligible. Also the bankers themselves do not pay the same interest that they were

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once paying. They have been yearly reducing the interest on deposits. I do not think that any banker has been paying more than five or six per cent. interest upon fixed deposits during the last four or five years. Even the other day I received a notice from the National Bank saying that they have still further reduced the interest from four per cent. to three and three-fourths per cent. Therefore the difference between four per cent. and the rate of interest that they might be paying their depositors is insignificant,

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): But is it not in view of the present Bill being passed into Law that the bankers have been reducing interest?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): Sir, my information is that the bankers have been reducing the interest during the last four or five years.

MR. K. R. ELENKATH (*Kalkulam I*): May I know whether this reduction of interest would affect deposits which have been made earlier?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): Sir. I do not think I need answer that question. Thirdly, I submit that these bankers and money-lenders have been receiving very high rates of interest during times of prosperity. They were then receiving not six per cent. or twelve per cent. but up to 50 per cent. I would invite the attention of this House to a passage in the Banking Enquiry Committee's Report at page 8, it says:—

> "Except from the Government and the Co-operative Societies the conditions of borrowing are adverse to the ryots and in some cases even ruinous. Agricultural loans are issued at 6 per cent per annum and the Co-operative Societies lend at 10½ per cent. The joint stock and private banks charge from 12 to 24 per cent. The money lenders' rates vary widely. The professional money lenders, however charge high rates of interest ranging from 18 to 50 per cent. In Nanjinad we are told that the ryots are financed by petty money lenders who charge up to 75 per cent."

MR. P. C KURIYAN (*Kottayam I*): May I know who were the members on that committee?

M. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): There were bankers, lawyers, and money-lenders on that committee. I think Mr. Mathan was a member of that committee. Sir, in spite of the Regulation 1010 restricting the rate of interest to that a court could decree to 12 per cent. the bankers and the professional money-lenders have been evading the law by various crooked means and realising interest from 12 to 50 per cent. on agricultural loans. Therefore what they have to do is merely to disgorge a small portion of the enormous and unjust gains which they made in times of prosperity in order to give some little relief to the agriculturists at this time of

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distress. So I submit, Sir, that the money-lenders and bankers do not really stand to lose very much by the proposal that I have now placed before the Assembly for its consideration, if they do, it is nothing but just that they should bear a share of loss.

MR. K. R. ELENKATH (*Kalkulam I*): May I know whether this will not be prejudicial to those who have, out of honour, paid the interest already at some sacrifice, and whether this will not give more advantage to those who have not paid the interest till now?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): They do not lose anything. They gain their honour.

I submit, therefore that there is no valid or reasonable objection that can be raised by bankers or the money lenders against this proposal to reduce the interest to four per cent. from the year 1105 when the economic depression commenced. What is being asked for is not a special favour. It is only sheer justice. If this Assembly means really to give relief to the agriculturists, it will have to accept my amendment. I, therefore, submit that my amendment may be accepted by the House.

Before I conclude, let me seek your permission, Sir, to make a slight alteration in the amendment. A doubt was expressed whether this is not likely to be made a permanent provision. I do not intend that the reduction in the rate of interest should be permanent. My intention is that that it should continue only so long as the present condition lasts. Yesterday, I suggested in my amendment that the words "in existence on such date" might be deleted. Instead of deleting the whole I would now suggest that the words "in existence on the date of the commencement of this Regulation" might be substituted.

PRESIDENT: What is the number of your amendment?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, the amendment moved yesterday is not in the order paper. He moved it with the special permission of the Chair. The wording that he wants now is already there. Is it the member's idea, in moving this amendment, that this proposal to reduce interest should remain in force for ever or should remain in force only for three years from the commencement of the proposed Regulation?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): I do not propose any time limit. I move that the words "in existence on the date of the commencement of the Regulation" be substituted for the words "in existence on such date" occurring in line 4 of clause 34.

MR. K. C. ABRAHAM (*Kottayam II*): Sir, I feel glad to support the general sense of the amendments because there is one difficulty at the outset.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): The amendment has not been seconded.

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MR. K. C. ABRAHAM (*Kottayam II*): I am seconding it, and, in doing so, I am supporting the general sense of the amendments that are now before the House. The amendments that are now before the House are amendments Nos. 246, 248, 251, 253, 254, 262 and 261. I can only support the general sense underlying these amendments. If I am permitted to do so, I shall read the Section as redrafted in the light of these amendments.

PRESIDENT: I understand the Honourable member to be the seconder of the two particular amendments Mr. Changanachery Paramesvaran Pillai had moved. But from what the member says, I gather that he is going to cover some different ground.

MR. K. C. ABRAHAM (*Kottayam II*): I propose to cover the several amendments that have been moved. I second Mr. Parameswaran Pillai's amendment also.

PRESIDENT: In seconding, you want to make some observations also. I hope the observations will not have the effect of going against the amendment.

MR. K. C. ABRAHAM (*Kottayam II*): My observations will cover all the amendments.

PRESIDENT: I want to say a word on the matter, because I find that not only two amendments but practically four amendments are before the House. Two amendments were moved by Mr. Kunjukrishna Pillai and seconded. The other two were moved just now, by Mr. Changanachery Paramesvaran Pillai, which have yet to be seconded. I think the object with which the Deputy President, in the Chair, permitted these four amendments to run the race simultaneously was perhaps to expedite discussion and permit members to speak on such aspects of these amendments that they specially wish to stress. Therefore, I say that, if any Honourable member wishes to speak now, he will be at liberty to speak either on both the amendments which have already been moved and seconded or the two amendments which have now been moved and, I hope, will be seconded. He need not consider it obligatory on his part to speak on all the four. He might speak on any one of those amendments or he might speak on any aspect of those amendments. I wish to emphasise this point at this stage because, when the four amendments come to be put to the House, the Chair will be in some difficulty. To facilitate the questions being put to the House on all these four amendments, I will permit the Honourable members to speak only on such aspect of these amendments as they wish to stress and no more.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): May I make a suggestion, Sir, in order to facilitate the putting of questions and in order to have the amendments properly brought on record? The movers, of the amendments may re-draft the Clause as desired to be amended by them, and give the drafts to the Chair.

PRESIDENT: That is to say, the proposers will have to put their heads together and give us a re-draft of this Clause as they would like it.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Otherwise, it will be difficult for the Secretary to incorporate the amendments in the Bill. We may all know them, but there will be difficulty in re-drafting the Clause.

MR. K. C. ABRAHAM (*Kottayam II*): In the light of the observations from the Chair, I shall bring forward the re-drafted Clause. As I have re-drafted the clause in the light of the amendments, it will read thus:

> "*Notwithstanding anything in any law, contract, decree or order of court, no interest shall be deemed to have accrued or shall accrue or be permitted to be recovered as accruing* (the words "shall be deemed to have accrued" are inserted by me) *from and after the first Chingam 1105 till the expiry of three years from the date of the commencement of this Regulation, in respect of any debt (not due in paddy or grain) in existence on such date at any rate not exceeding a fixed percentage*" What that percentage is I do not say now.

PRESIDENT: That is not in Mr. Kunjukrishna Pillai's amendment.

MR. K. C. ABRAHAM (*Kottayam II*): Yes, Sir.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Are we going to have a third amendment then?

MR. K. C. ABRAHAN (*Kottayam II*): No.

PRESIDENT: The member is trying to help the two honourable members who moved their amendments by furnishing them, and thereby the whole House, with a redraft of the whole Clause.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): It is not identical with either.

MR. K. C. ABRAHAM (*Kottayam II*): It cannot be, except for the point that may be taken objection to by Mr. Kottur.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): May I know, what is the purpose of the wording "be deemed to have accrued"? I am asking in order that I may understand the effect of the amendment. Is it to enable the refund of interest already paid?

MR. K. C. ABRAHAM (*Kottayam II*): That is one of the objections I want to point out. As a matter of principle, I object to any settled accounts being reopened.

PRESIDENT: That is causing difficulty. I think it will be better for some honourable member to second the amendments already moved in its present shape and form before we take up other amendments.

MR. K. C. ABRAHAM (*Kottayam II*): I do not move it as an amendment, Sir.

PRESIDENT: Then, are you seconding that amendment in its entire form?

MR. K. C. ABRAHAM (*Kottayam II*): Yes, Sir. I want to make clear what the distinction is between these amendments and the original proposition as drawn up and revised by the Select Committee. For that purpose it was that I underwent so much labour, which is now

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pronounced to be useless to make a uniform amendment which may appear to be sensible but differing from all these amendments. The first difference is as regards the period during which the reduction of interest ought to operate. In the Bill as drawn up by the Select Committee it was to apply to a period after the commencement of this Regulation. As now sought to be amended by the proposed amendment, it would come into operation uniformly from the 1st Chingom 1105 to a period ending with the expiry of three years from the commencement of this Regulation.

As regards debts to which it may be applied in the Bill revised by the Select Committee, it was to apply only to debts in existence at the date of the commencement of the Regulation. But as is now proposed to be amended, it would apply to all debts that are in existence between the 1st Chingom 1105 and the date of the expiry of three years from the commencement of this Regulation. Thirdly, the point of difference is that the rate of interest was intended to operate as regards the future accrual only from the date of the commencement of this Regulation. But as is now revised, it would begin as on the 1st Chingom 1105. Then there is also the difference in the rate of interest.

I would first confine myself to the rate of interest. That, I think, is the substantial remedy on which much discussion has to be directed. As regards the rate of interest, there might be so much divergence of opinion if it is to operate from 1st Chingom 1105. There may be loud complaints of usurping the vested rights; of that anomalous word "retrospective" of which some people are afraid and then of doing violence to contractual rights. It is very easy to explain these factors. I am not myself afraid of retrospection in legislative enactments wherever necessary, This is based on two fundamental principles and one hypothesis. The hypothesis is that there has been an unprecedented economic depression so far as agriculture is concerned, The agriculturists have been groaning under debt mostly on account of difficulty of paying interest. Apart from the question of impossibility, there is nothing difficult in the performance of contract, This is the economic aspect of the matter. In regard to the reduction of interest, there is also the political aspect of the matter. The creditors must sacrifice a portion of their interest. This can be a just and expedient proposition. I believe there is nothing impossible in the contract being performed; and I believe the agriculturists would be the last persons to shirk the responsibility in the performance of their contract. If it comes to that, they will be prepared as honourable men to meet the demands against them in the discharge of their debts that they have incurred. They will even risk the very substance of their assets on which their life-blood depends. But the State will see that, if they are compelled to such a state of affairs, they are not driven either to insolvency courts or to the streets. It may be possible to discharge debts without reduction of interest. But seeing that the depression has been unprecedented and there has been a fall in the value of products due to depression,

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which was never before thought of, it is only just that from the principle upon which interest and profits are based, a reduction of interest is just and equitable as between the several sections of the communities which from parts of the State.

I will elaborate the point. I ask what is this interest after all? Now there is so much unhappiness felt on the question of reduction of interest and some say that it is quite unnecessary. But, what after all is interest? Interest, according to me, is only a share of the profit by investment of labour and capital; labour and capital, when spent upon a certain productive activity, are entitled to stand on equal footing and the profit out of that is to be distributed between capital and labour. It follows naturally that interest is only a share of the profits. Where there is no profit at all, where the profits are not there as such, then certainly it cannot be defended in justice that interest should be paid to the capitalist. Is it not in the interest of the State that capital and labour should work hand in hand for the purpose of giving relief? That is the economic point of view.

There is another point of view on the political side of it. There is nothing unjust in relieving a certain section of the community from the present distress to which they have been driven on account of the excessive interest they are called upon to pay. What is a State if it is not a team work? I believe even the most advanced conception of a State is not only furthering of individual advancement but also for the entire of State. A State is a combination of several interests. It is the principle of team work that every one should suffer and sacrifice for the mutual advantage of getting maximum common good. If the agriculturist is suffering, it is only right that the capitalist comes to the help of the agriculturists and makes the progress possible for the benefit of both labour and capital. What is it except justice and equity. It is only right that, because a certain section of the community suffers on account of extraordinary circumstances, the other section who is in a prosperous position must sacrifice a portion of their capital, I use the word 'sacrifice' deliberately, for the advancement of both capital and labour. The resultant factor being the well-being of the State, such a method is profitable. There is nothing against justice, nothing against equity, to force the capitalist to reduce the interest to a certain extent during the period when the agriculturist has not been able to pull on fairly as well as he ought to do. Therefore my submission is that, so far as Mr. Changanachery Paramesvaran Pilla's amendment regarding reduction of interest, is concerned it does not matter to me whether it is 6% or 4%. It will result in good if 4% is adopted both in the interest of the State and in the interest of the agriculturists. I will personally support the 6% idea.

There is another point to which I should like to draw the attention of the House. From the wording of the amendment, it is possible to take it that from 1st Chingom 1105 the interest must be calculated or deemed to have accrued only at the rate of 4 or 6 per cent. even if transactions were closed. Even if parties have come to a compromise even such accounts might be reopened. That is what it comes to by

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reading the amendment into the clause. To my mind, that could not be done. When people have paid and their creditor has been satisfied, they ought not to be dishonourable afterwards. The payment must be taken as the discharge of debts and only the outstandings alone should thereafter be considered for the favourable operation of this legislation. Or else it is allowing people to drift in a nebulous condition; and if the adjusted accounts are reopened, much harm will ensue., It is a pleasure to support the amendment of Mr. Changanachery Parameswaran Pillai and the other amendments subject to the restriction that settled accounts can never be allowed so be reopened.

MR. S. J. NAIR (*Nedumangad*): I support the amendment of Mr. Changanachery Parameswaran Pillai without any reservation whatsoever. I also support the other two amendments. Before we come to the question of reduction of interest, this House will have to take into consideration the actual condition of the agriculturists in Travancore before 1105, I mean before the economic depression set in, and after 1105, after the economic depression set in. There was no time when the agriculturist was able to secure more than 4% profit for the money he has invested on the properties. That was the condition of the agriculturist even before the economic depression of 1105. Now, one can imagine the worst condition of the agriculturists on account of the economic depression. Money—lenders lent out their money with the object of getting, 20 to 100% interest after the depression set in. Before the depression period, they were not getting high rates of interest as they do get now.

Money—lending went on at the rate of 18, 30, and even 100 per cent. interest. After the economic depression has set in in the State, the agriculturists are not getting even one per cent. 'interest for the money they have invested in the lands. Such being the condition, the amendment that is proposed by Mr. Changanachery Paramesvaran Pillai is only too modest.

Another aspect of this question is that we are now at Clause 34 in Part 3 of the bill. Part 3 of the Bill deals with temporary provisions regarding execution of decree and interest. Nothing more than that. Clause 33 provides for the giving of money in instalments extending to 24 and 12 years. This is not a novel provision that has been made by the Government in this Bill. Even without this, the decree-debtors are actually getting instalment system for their decree debts. But the agriculturists are thankful to the Government for providing the instalment system under a statutory basis by introducing this Bill. By Clause 33 sub-clause (2) the agricultural debtors are compelled to pay security of their properties. So some sort of benefits or conversion that has been granted by one part of the provision is denied by the latter provision of Clause 33. So Clause 33 is not in any way doing any good to the agricultural debtors, until Clause 34 is amended as has been suggested by Mr. Changanachery Parameswaran Pillai. Therefore I support the amendment.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I oppose all these amendments. The effect of accepting these amendments, particularly Mr. Changanachery Paramesvaran Pillai's, is to reduce interest on all transactions entered into prior to the date of the commencement of this Regulation to four per cent. per annum. Mr. Changanachery Parameswarn Pillai does not admit that the amendment, if accepted, would be expropriatory. .In reply to Mr. Kayalam Paramesvaran Pillai's question day before yesterday whether in such cases compensation should not be paid to the creditor, he said that no compensation need be given because there is no case for compensation. On the other hand, he put it on the ground of impossibility of performance. He said that there is such a change of circumstances as to justify even courts of law for giving relief even in individual cases. He further said that there may be difficulty in adjudicating individual cases. According to him, there is great difficulty in having the matter decided upon in each individual case. So he said we will only be doing what the Law would do as administered at present and argued "let us have a general law for all debts that have come in to existence prior to the date of the Regulation and let us fix the interest at four per cent". That he said as a lawyer is a proposition which every court of law would accept, but having regard to the difficulty of deciding the matter in each individual case he was for a general legislation.

Having regard to the new theory upon which this proposition is based, I shall try to explain what exactly the Law of Contract is on the subject of subsequent impossibility. The subject is really a case of discharge by implied agreement and comprises cases where it is to be implied, even if it is not expressly stated, that, on the happening of certain disabling events or unless a state of things continues to exist, the parties shall be free to consider the contract discharged. I will explain it. A promise may be one impossible in itself, for example, to find out treasure by magic or to convert copper into gold. That is obvious impossibility. It is a case of void contract, void on account of want of real consideration. Secondly it may be a contract made impossible by the act of one of the parties to the contract. Here , at any rate, it is not the creditor that has made it impossible for the debtor to pay. Nobody will say that the creditor is responsible for the economic depression and therefore he need not be paid. That also does not apply. Then there is a third case of impossibility because of the non-existence of the subject matter at the time of the contract. That also will not apply to the present case because it is a case of bilateral mistake. There is only one case that can be contemplated and that is "not inherently impossible but impossible in fact". About this the general rule of law is that, if a man without qualification undertakes to do a certain thing, it is not an excuse for him that he has been prevented from doing it by circumstances over which he has no control. That, Sir, is the law as every lawyer knows. General convenience requires such a rule, for there will be no security if it is open to the parties to plead any and every kind of supervening impossibility. Where it was possible to the promisor to have protected himself from the risk if he did not stipulate for excluding liability in certain events the promisor will be bound.

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MR. A. THANU PILLAI (*Trivandrum—Rural*): May I know whether the legislature interferes with the existing law as it is only when it is not able to cope with these circumstances?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I never said that. Mr. Changanachery Paramesvaran Pillai based his arguments by saying that we are not changing the law. He said that we are only applying the existing law and there is no case for compensation because there is no expropriation.

PRESIDENT: Whatever Mr. Changanachery Paramesvaran Pillai might have said, the Hon'ble member has got to remember that this Regulation is intended not to strengthen but to follow the law in variance with the existing law, for the very first words in Part III of the Bill are:—

> "Notwithstanding anything in any law, contract, decree or order of court, for a period of three years".

So why should the member labour with the Law of Contract and such other things?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): What I submit is that the point advanced by the mover of the amendment cannot be accepted. In such cases it is the duty of the legislature to see that compensation is paid to the creditor.

PRESIDENT: Please remember that Clause 33 has already been passed.

MR. P. C. KURIYAN (*Kottayam 1*): May I know whether clause 33 as it is interferes with vested interest?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): No. What I say is that the amendment proposed to Clause 34 is clearly expropriatory without even a shadow of compensation and it is only fair on principle that the creditor is given compensation.

To speak from the view of expediency, we know that bankers have paid dividends and income tax on interest accrued treating the same as interest received and accounts have been adjusted on that basis. The mover of the amendment said that it is all a matter with which we need not concern. But I say it is a matter which we should consider. Joint Stock Banks have large dealings with agriculturists. In fact their dealings were mainly with the agriculturists from a very long time.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Are not we concerned only with outstanding transactions and not with transactions which are closed?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): That is all what we are now concerned with. In reply to that question I have to state that, if we are going to write off all the debts and going to fix the rate of interest at 4 or 6 per cent. the credit of the country is at stake. I will also refer to the language of the amendment. My observations also relate to the language of the Clause as it is about which I wish to move amendment No. 247. The language of the Clause is ".....no

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interest shall accrue, or be permitted to be recovered as accruing....." I have moved that "no court shall allow interest to be recovered from a debtor—" I have moved for the insertion of the expression "no court shall allow interest to be recovered from a debtor.. at any rate exceeding six per cent. per annum", because according to the Section as it is no interest shall accrue at a rate higher than six per cent. There are cases where parties by mutual consent may agree to pay interest at a rate exceeding six per cent. and they may actually pay it. To say that in such cases where they have been recovered by mutual consent, to say that it shall not be binding on them is highly objectionable. Nobody would get credit for six per cent. Even for gold pledge we cannot get money for 6 per cent If the expression were "no court shall allow interest at a rate higher than six per cent" then it would be possible for parties to obtain at least some credit. Then there might be some to give and others to receive. If the Section is worded as it is, I doubt, Sir, whether even on pledge of gold it would be possible for the agriculturists to get money. It would therefore be in the interest of the country in general to accept the amendment that I have proposed "that no court shall allow interest to be recovered from a debtor" instead of the expression used in the clause.

MR. K. PADMANABHAN (*Chirayinkil I*): I oppose all these amendments. These amendments in short militate against certain important principles which we have to bear in mind in enacting this piece of legislation. Sir, it is apprehended that this Bill, when it becomes law, will have its reaction on the future economic life of the country. It has been conceded on all hands that to a certain extent the future credit of the country will suffer. If credit transactions, if money lending transactions are to suffer, I am of the opinion that agriculture will suffer, industry will suffer and commerce will suffer. If we are going to adopt these amendments, it will be that we are driving headlong into a state of economic paralysis so to say. Hereafter when the law comes into force in the amended form, it would not at all be possible for any agriculturist or commercial man to raise any loan.

MR. A. THANU PILLAI (*Trivandrum—Rural*): May I know what the monied man will do with his money?

MR. K. PADMANABHAN (*Chirayinkil I*): He will not part with money.

MR. A. THANU PILLAI (*Trivandrum—Rural*): Then what will he do with it?

MR. K. PADMANABHAN (*Chirayinkil I*): He will probably keep it in his safe.

Sir, that is a very bad consequence which this House has very seriously to guard against.

Secondly, another objection I note is with regard to giving retrospective effect to the provision for limitation of interest. Sir, it is a common rule of law that no legislation should give retrospective effect to any law particularly substantive law. Here we are enacting a substantive piece of legislation. In regard to procedure law, the rule is

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[Mr. K. Padmanabhan.]

otherwise. A right is a right vested in a person in due course of law and such right cannot be divested. It has been argued in regard to giving retrospective effect that that was a matter upon which the Debt Redemption Committee has recorded its opinion. If what is contained in the Agricultural Debt Redemption Committee's report is the final verdict, I ask why should we trouble ourselves with this Bill at all? Why was that report placed before the House? Why should Government trouble themselves with drafting this piece of legislation and passing it through this House? Sir, the rate of 6 per cent. interest and that to come into operation from the date of the passing of this Bill were decided upon after considering all aspects of the question by this House and by the Select Committee which sat over the Bill. Under these circumstances, it would be most unwise to adopt this amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, in this debate certain issues which are far more important than any that have come up till now arise and I request the honourable members to consider the issues carefully and decide them in a dispassionate spirit. The first issue is whether the reduction of interest may be made to operate in respect of any period previous to the commencement of the proposed Regulation and that from 1st Chingom 1105. This proposal has been criticised as being retrospective. I think, Sir, that the word that will more correctly express the effect of the proposal is "expropriatory". Perhaps, even the provision as it is in the Bill may be considered to be "retrospective" in the sense that the interest though sought to be reduced only from the commencement of the Regulation is still entered due on contracts which are already existing. In regard to the proposal now before the House, the only word that can correctly express its effect is "expropriatory". The interest that has *already* accrued is clearly a man's property in a sense entirely different from that in which interest that may accrue to him at a future period may be viewed. The interest that has already accrued is a kind of property that has been enjoyed by him or may have been made use of by him in some way or other to adjust and fix up his rights. I say this not merely from a theoretical aspect.

MR. S. J. NAIR (*Nedumangad*): In the case of a debtor who has become an insolvent would the interest that has accrued become the creditor's property?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I am saying that it is not merely from a theoretical point of view that this proposal is expropriatory. It has been brought to the notice of the Debt Redemption Committee that many, particularly money lending firms, who take deposits, and Joint Stock Companies who takes deposits, give interest on deposits and give dividends on the basis of interest that has accrued, even though that interest has not been realised in cash.

MR. A. THANU PILLAI (*Trivandrum—Rural*): May I know the amount that the Banks have advanced to agriculturists?

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I cannot say from memory.

MR. P. C. KURIYAN (*Kottayam I*) : May I know to which Committee the member referred to?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : To the Agricultural Debt Redemption Committee.

MR. P. C. KURIYAN (*Kottayam I*) : May I know whether the honourable Law member was a member of that Committee?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : That question does not arise.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnatur cum Patianapuram*) : Supposing dividends have been paid on unrealised interests and subsequently the debtor becomes insolvent?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I am not at that point now. I was saying that the interest that has already accrued is a man's property, and I am saying that such property has been enjoyed and made use of. And I want to say that this is not mere academic theory and that as a matter of fact many of the money of lending firms and Joint Stock Companies have given dividends, and interest on deposits on that basis of accrued interest.

MR. A. THANU PILLAI (*Trivandrum—Rural*) : The State has now stepped in time and limited the interest to half the contract rate. Is it expropriatory?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Please wait. I am now saying, Sir, that the interest that has accrued to a man is his property clearly. If such interest is cut down, that is clearly expropriatory. Now then the question is whether such expropriatory legislation cannot be enacted under extraordinary circumstances. Yes, it may be but so far as I can see, expropriatory legislation has not been enacted without some compensation being made. Whether the compensation given is adequate or inadequate may be a matter of opinion. There must be some compensation or other. I cannot think of any expropriatory legislation without any pretence of compensation being offered. If the State passes such legislation without giving compensation, it will have a very bad moral effect; and I doubt if any State, which claims to be a stable State, will venture to do so.

MR. P. C. KURIYAN (*Kottayam I*) : Is not curtailment of future interest also expropriatory?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : That is entirely different.

In regard to future interest, persons can adjust their position in accordance with the law. In the case of past interest, persons have already adjusted their rights on the basis of such interest; and therefore future interest is not property in the sense that past, accrued, interest is property.

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MR. A. THANU PILLAI (*Trivandrum—Rural*): May I know how the member distinguishes between interest that has already accrued and interest that will accrue on existing debts before money is paid?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Interest that has accrued is a man's property on the basis of which he has already adjusted his rights. But in the case of future interest it is only going to be made the basis of adjusting rights.

The report of the Agricultural Debt Redemption Committee was cited in support of the proposal now before the House. I would therefore point out that some compensation was offered by the Committee when they proposed cutting down past interest. That compensation was that the interest must be paid in cash forthwith or within a fixed period. No doubt, it may appear strange that what is a man's legitimate due is considered as compensated. But in fact as a compensation it was admitted before the Committee that many creditors were prepared to give up not only interest but even a portion of the principal if the rest is paid in cash.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): May I point out to the Law Member that, in the Central Provinces, there is a law passed which reduced rate of interest for loans contracted on or after April 1930 till such time as may be found necessary owing to the economic depression? May I know whether the Central Provinces can be considered to be a solvent State or a stable State?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I shall not dwell upon the peculiar problems of the Central Provinces. Let us now deal with Travancore. Many creditors have expressed their view to the Committee that they are prepared to scale down the debts by 50 per cent. on condition of the rest being paid in cash. Some have said that they are prepared to reduce the interest and accept payment in instalments provided something is paid in cash and security is offered for the payment of the balance. So that, payment in cash is a compensation for reduction of the interest and perhaps even for reducing the principal. But to say that the interest shall be reduced, without even the offer to pay, in cash, that reduced interest is expropriation without even a pretence of compensation. It is expropriation pure and simple—unrepentant, unabashed. And I cannot agree to it for a moment.

Sir, it must also be remembered that this provision, expropriatory as it is, can be availed of by the deserving as well as by the undeserving debtor. Mr. Changanachery Paramesvaran Pillai referred to the impossibility of performance of contract. But he must recognise that there are agriculturists who are still able to pay the stipulated interest and therefore can perform the contract. Why should an expropriatory provision be made for his profit? Between party and party, if a man is able to perform the contract and pay the interest, why should he not pay it and why should not the creditor be allowed to recover his interest in accordance with the contract, if the debtor is in a position to pay? There is absolutely no justification to deny that to the creditor.

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Furthermore, I would point out that this expropriatory provision is absolutely unnecessary in view of the other provisions of the Bill. Sir, I grant that the burden of debt is heavy on the agriculturist: and I also agree that that burden should be lifted, wherever it is a *real* burden, that is to say, wherever it is in fact a case of an agriculturist *groaning* under the debt. If, say, a millionaire—probably there are no millionaires in Travancore, but there are *lakshaprabhus*—if, say, such *lakshaprabhu* whose wealth can be counted in lakhs of rupees has a debt of a few thousand rupees, can you consider that such an agriculturist is under a *burden* of debt? I cannot imagine that to profit such a man an expropriatory provision should be passed. In the case of such a debtor, why cannot the creditor be allowed to recover every pie of the interest? This is the most objectionable feature of the proposal, which is to cut down interest irrespective of the ability of the debtor to pay it.

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): When Government reduced land tax by 12½ per cent., was it not availed of by those who could afford to pay the whole amount as well as the those who could not afford to pay any tax?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I am surprised that a member of the standing of Mr. Changanachery Paramesvaran Pillai should put such a question. That is an amount due to Government. You should not compare Government with a private creditor. In the one, it is the case of a State protecting its subjects. In the other, it is a claim between subject and subject arising under the laws of the State. Here, the question is why should a private party suffer?

If honourable members will kindly look back into the provisions of the Bill already passed, the very thing that is sought by this amendment has been provided for, but without any of the objections pointed out arising. That is in the Conciliation Chapter. The Conciliation Board can cut down interest, and, if necessary, even scale down the principal, wherever there is a real burden, in fact, on an agriculturist. If the debtor can easily pay, then there is no burden and the Board may not cut down anything. But, in deserving cases, the Board will. That is no doubt expropriation; but it is expropriation with the consent of the party expropriated, because, if the creditor does not agree, the Conciliation will not be operative. But creditors *will* agree whenever the debtor's inability is real. They do so not from mere generosity but from business considerations. For, when all the assets and the debts of the debtor are laid bare before the Board, the creditor will see that it is advisable to accept the conciliation proposed by the Board, for he will appreciate that, whether the debtor be sent to the goal or hanged from the gallows, he cannot pay, unless he has the wherewithal to pay; and therefore it is likely that he will agree to the Conciliation. It may, however, be that the creditor does not agree. What will follow? And this is the most important point. A certificate will be recorded by the Board and that certificate will say what will be the proper and equitable adjustment between the debtor and the creditor. That certificate may be produced before the court. And upon that certificate, the

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[Mr. Kayalam Paramesvaran Pillai.]

court may reduce the interest. From what date and to what rate? And mark this, from the very 1st Chingom mentioned in the amendment and to 4 per cent. the very rate mentioned in the amendment.

The two points now urged by the amendments are the reduction of the rate of interest from the 1st Chingom 1105, and the reduction of the rate of interest to 4 per cent. Even under the provisions that have already been accepted by the House, both these are possible; but in deserving cases only, and each case will be examined by two authorities, firstly, by the Board and then by the Court, before these two concessions are granted. If, on an examination of a case, the Board or the Court finds that there is justification for the interest being reduced to four per cent. and also for such reduced rate of interest taking effect from the 1st Chingom 1105, both these will be ordered. The Bill provides for that already. The principle that has been accepted in the provisions that I am now referring to is not any kind of expropriation, but it is really a kind of penalty on the creditor for his unsocial or undesirable conduct in not accepting the fair award of the Board. It is as a kind of disciplinary action on the creditor, for not accepting the reasonable award of the Board, that the provision has been made for the interest being reduced to four per cent. and for such reduction taking effect from 1-1-1105. There is therefore no expropriation in the correct sense. Further, this special concession will be available only to deserving men; because it is left to the Board, and later to the Court, to examine the case, and then decide whether this concession should be allowed or not. These provisions have been so well conceived and so carefully and harmoniously put by the Select Committee that no one can reasonably take objection to them. Sir, I shall not claim any credit for this. All credit is due to the Select Committee. Why should such a good piece of work be be smirched, and that so wantonly. I say besmirched, because any piece of legislation will look bad with such a kind of expropriatory provision, and I say wantonly, because, as said just now, there is no necessity for it.

In regard to the reduction of the rate of interest to 4 per cent., I should like to point out to the House that such a provision would prove injurious to the agriculturist debtor instead of helping him; because, it will become impossible for him to raise any loan hereafter. Sir, when money can be invested with the Government at 3½ per cent, how can we expect any creditor to advance money to the agriculturist at 4 per cent?

In regard to the third point, *viz.*, whether the reduction is to be in force for three years after the commencement of this Regulation, or for ever, I submit, Sir, that this measure is intended to meet an emergency. Once that emergency is over, people must be allowed to contract as they like. If we make this provision perpetual, the result will be that the creditor will be forced to rush to the Court and sue for all the existing debts. We must never reduce the rate of interest by this Bill to such an extent as to induce the creditor to recover what h

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can from the debtor and to seek other investments. Even if the creditor could get only one-half of the money due to him, he would prefer to sue for it, so that he may get it and invest it, say, in the Government loan for 3½ per cent interest. Such investment would surely be business-like from the point of view of the creditor.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): But the Government will not take more than Rs. 50 lakhs?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): There are several other secure investments now available. For instance, some Municipal Board or Port Trust in British India has recently advertised a loan of 3½ per cent By investing in such loans, the creditor can be sure of the payment of interest periodically as and when it falls due; and the principal also will be paid the very minute it becomes due. Sir, the agriculturist also must have some facility for borrowing. The rate of interest must not therefore be reduced to 4 per cent., nor should such emergency provisions be kept in force for ever. It is one thing to say that the burden of debt should be lifted from the head of the agriculturist. It is quite another to say that he should be kicked down to the very *pathala* so that he may never more lift up his head to see a willing creditor to advance any debt hereafter. Sir, I oppose the amendments. (*Cheers.*)

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): Before the amendment is put to vote ——

PRESIDENT: It is a personal explanation?

MR. CHANGANACHERY K. PARAMESVARAN PILLAI (*Kunnattur* cum *Pattanapuram*): No, Sir; just a suggestion in regard to the order in which these amendments are to be put to vote.

PRESIDENT: The Chair will take great care about it.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Quilon II*): I may be permitted to submit one word, Sir. There is one impropriety in the amendment; it will conflict with the previous Clause that has already been passed. I merely want to point out that error in the amendment; I do not want to repeat any of the arguments that have been advanced, nor even to add any new argument.

PRESIDENT: The two honourable members responsible for amendments Nos. 251 and 257 on the one hand and for 254 and 262 on the other, have been good enough to redraft the clause as they would like to. Inasmuch as all the four amendments were discussed simultaneously, I shall read out to the House both the Clauses, so that the House may note the difference between the two. Mr. Kunjukrishna Pillai is responsible for amendments Nos. 251 and 257. The Clause as re-drafted by him would read thus:

> "Notwithstanding anything in any law, contract, decree, or order of Court, no interest shall accrue or be permitted to be recovered as accruing from and after the 1st of Chingom 1105, up to the termination of three years from the date of the commencement of this Regulation in respect of any debt, (not due in paddy or grain), in existence on the date of commencement of this Regulation, at any rate exceeding 6 per cent per annum."

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[President.]

The re-draft given by Mr. Changanachery Paramesvaran Pillai who is responsible for amendments Nos. 254 and 262, would read thus :

"Notwithstanding anything in any law, contract, decree or order of Court, no interest shall accrue or be permitted to be recovered as accuring from the 1st of Chingam 1105 in respect of any debt not due in paddy or grain, in existence on the date of the commencement of this Regulation, at any rate exceeding 4 per cent per annum."

It is the obvious duty of the Chair to help the honourable Members to concentrate their attention on the various aspects involved in these two amendments. I shall attempt to clarify the position by dividing these two amended clauses into a number of specific issues, so that each issue may be put to vote separately. To my mind, the first issue which arises out of these two amended clauses is whether interest may be reduced from the 1st Chingam 1105. I shall first put that to the vote of the House.

The question was put to vote and declared lost.

MR. S. J. NAIR (*Nedumangad*): I demand a poll.

A poll was taken and the House divided as follows:

AYES—37.

1 Mr. K. C. Abraham
2 „ T. K. Alexander
3 „ V. T. Chacko
4 „ M. Mahomed Haneef
5 „ S. J. Nair
6 „ Sadasya Tilakan T. K. Velu Pillai
7 Miss. Hepzibah Gnanasikamony
8 Srimati T. Narayani Amma
9 Mr A. Thanu Pillai
10 „ Antony George
11 „ J. M. Joseph
12 „ P. C. Kuriyan
13 „ S. Nilakanta Pillai
14 „ N. John Joseph
15 „ T. C. Joseph
16 „ T. T. Kesavan Sastri
17 „ K. M. Krishnan
18 „ E. K. Kunjuraman
19 „ K. Mahomed
20 „ K. M. Kuriakose
21 „ K. Madhavan
22 Mr. R. Raman Pillai
23 „ P. K. Thomas
24 „ Changanacherry K. Paramesvaran Pillai
25 „ S. Thiraviam Nadar
26 „ N. E. Varghese
27 „ K. Kunjukrishna Pillai
28 „ Pacode A. Narayana Pillai
29 „ N. K. Krishna Pillai
30 „ A. Easwara Pillai (*Kalkulam* II)
31 „ A. Easwara Pillai (*Kottarakara*) :
32 „ Kainikkara M. Padmanabha Pillai
33 „ Edavanatt S. Padmanabha Menon
34 „ Pottayil S. Krishna Panickar
35 „ M. K. Madhavan Pillai
36 „ V. K. Velappan Nair
37 „ G. Nilakantan

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NOES—24.

1	Mr. N. Abdur Rahiman Sahib	14	Mr. T. P. Velayudhan Pillai
2	Rao Sahib S. Paramesvara Aiyar	15	,, Kayalam Paramesvaran Pillai
3	Mr. S. Chattanatha Karayalar	16	Rao Bahadur Dr. N. Kunjan Pillai
4	,, T. S. Jayantan Namputiri	17	Mr. K. George
5	,, K. P. Krishna Menon	18	,, T. C. Thommen
6	,, P. C. Narayanan Bhattatiripad	19	,, C. O. Madhavan
7	,, V. Ramakrishna Panicker	20	,, K. N. Kesava Pillai
8	,, K. C. Karunakaran	21	,, M. Govinda Pillai
9	,, K. Padmanabhan	22	,, C. V. Chandrasekharan
10	,, R. Sambasiva Aiyar	23	,, G. B. E. Truscott
11	,, A. S. Damodaran Asan	24	,, Vaidya Sastra Kusala Dr. (Mrs.) M. Poonen Lukose
12	,, R. Sivaraman Nair		
13	,, M. K. Janardana Kamath		

NEUTRALS—3.

1	Mr. K. R. Elenkath	3	Mr. M. Sivatanu Pillai
2	,, Puthupalli S. Krishna Pillai		

(*Cheers from the non-official members.*)

PRESIDENT: Are the agriculturists round about here? (*Laughter.*) The amendment is carried.

The next issue which arises from the two amendments now before the House is whether the rate of interest should be reduced to four per cent. per annum.

The question was put to vote and declared lost.

MR. S. J. NAIR (*Nedumangad*): I demand a poll.

A poll was taken, and the House divided as follows:

AYES—25.

1	Mr. V. T. Chacko	15	Mr. N. E. Varughese
2	,, M. Mahomed Haneef	16	,, K. Kunjukrishna Pillai
3	Miss Hepzibah Gnanasikamony	17	,, Pacode A. Narayana Pillai
4	Mr. S. Nilakanta Pillai	18	,, N. K. Krishna Pillai
5	,, S. J. Nair	19	,, A. Easwara Pillai (*Kottarakara*)
6	,, T. C. Joseph	20	,, Kainikkara M. Padmanabha Pillai
7	,, T. T. Kesavan Sastri	21	,, Edavanatt S. Padmanabha Menon
8	,, K. M. Krishnan	22	,, Pottayil S. Krishna Panikkar
9	,, E. K. Kunjuraman	23	,, M. K. Madhavan Pillai
10	,, K. Mahomed	24	,, V. K. Velappan Nair
11	,, K. M. Kuriakose	25	,, G. Nilakantan
12	,, R. Raman Pillai		
13	,, P. K. Thomas		
14	,, Changanacherry K. Paramesvaran Pillai		

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NOES—32,

1 Mr. K. C. Abraham	18 Mr. A. Easwara Pillai (*Kalkulam*)
2 ,, N. Abdur Rahiman Sahib	19 ,, R. Sambasiva Aiyar
3 ,, T. K. Alexander	20 ,, M. K. Janardana Kammath
4 Rao Sahib S. Parameswara Aiyer	21 ,, T. P. Velayudhan Pillai
5 Srimati T. Narayani Amma	22 ,, M. Sivathanu Pillai
6 Mr. K. R. Elenkath	23 ,, Kayalam Parameswaran Pillai
7 ,, S. Chattanatha Karayalar	24 ,, K. George
8 ,, T. S. Jayantan Namputiri	25 Rao Bahadur Dr. N. Kunjan Pillai
9 ,, N. John Joseph	26 Mr. T. C, Thommen
10 ,, K. P. Krishna Menon	27 ,, C. O. Madhavan
11 ,, T. C. Narayanan Bhattatiripad	28 ,, K. N. Kesava Pillai
12 ,, V. Ramakrishna Panikkar	29 ,, C. V. Chandrasekharan
13 ,, K. C. Karunakaran	30 ,, M. Govinda Pillai
14 ,, K. Padmanabhan	31 ,, G. B. E. Truscott
15 ,, R. Sivaraman Nair	32 Vaidyasastra Kusala Dr. (Mrs.) M. Poonen Lukose
16 ,, S. Thiraviam Nadar	
17 ,, A. S. Damodaran Asan	

NEUTRALS—4.

1 Sadasya Tilakan T. K. Velu Pillai	3 Mr. K. Madhavan
2 Mr. A. Thanu Pillai	4 ,, Puthupalli S. Krishna Pillai

PRESIDENT: The next question which would have arisen if question No. 2 had been passed would have been whether the reduction of interest should apply to debts coming into existence after the commencement of this Regulation. Now that goes. Then the reduction would have, according to this clause, effect indefinitely according to Mr. Changanacherry Parameswaran Pillai. But there is no reduction of interest and therefore that also must go. Now, I believe in the light of the one amendment that we have passed, Mr. Kunjukrishna Pillai's amended draft has the field. I will read it once more to the House:

> "Notwithstanding anything in any law, contract, decree or order of court, no interest shall accrue or be permitted to be recovered as accruing from and after the 1st of Chingom 1105 up to the termination of three years from the date of commencement of this Regulation in respect of any debt (not due in paddy or grain) in existence on the date of the commencement of this Regulation at any rate exceeding 6 per cent per annum."

The amendment was put to the vote of the House and declared carried.

PRESIDENT: I think in view of this long discussion that we have had on the very vital points concerning the clause, no other amendments have to be moved. Of course, I have one more amendment tabled by Mr. Sambasiva Aiyar. I am trying to find whether there are any other amendments on the agenda which need be taken up at all.

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MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): There is amendment No. 263 standing in my name.

PRESIDENT: You may move it.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): I beg to move the following amendment —

Add the following as Explanation (1) and re-number the existing Explanation as (2):

"Explanation (1) —Any payments made towards interest in excess of the above rate should be credited towards the whole or portion of the principal amount still remaining due."

Now this is a consequential amendment. Clause 34 has been so amended by this House as to give retrospective effect to the reduction of interest at 6 per cent. That is, it should have effect from the 1st Chingom 1105. In the case of outstanding loans if, such reduction is made, certainly there will be this inequality. Certain persons would have already paid up a portion of the interest that has already accrued due and certain others would not have paid up any portion of interest that might have accrued due. Sir, now that the House is considering the question of the rate of interest and has accepted the principle that interest must be reduced to 6 per cent. and that the reduction should take effect from the 1st Chingom 1105— the period which we all regard as the period of the commencement of the depression—it is only just and equitable that we should not give a premium to those persons who have not paid up any portion of the interest and should not impose a penalty upon those who have paid a portion of the interest that has accumulated.

Sir, our attempt in passing a measure like this is, as far as possible, to bring about economic equilibrium in a world which is sorely beset with a sort of economic disequilibrium. In order to bring about that equilibrium a consequential amendment, like the the one that I have proposed is necessary. I would submit, Sir, that in the United Provinces Agriculturists' Relief Act, Act No. XXVII of 1934, by Section 30, sub-clause (1), the rate of interest was reduced and it was given retrospective effect also. There the reduced rate was made to operate from 1st January 1930, more or less corresponding to 1st Chingom 1105. Sir, having passed such a section in the United Provinces Act reducing interest and making it operate from an earlier date, as a consequential amendment, they passed a subsequent clause, sub-clause (4) of Section 30. By that, provision was made that, in the case of payment according to the old contract rate, the excess payments, if any, may be made to go, so far as they may go, towards the part payment of the principal if any. There is of course no attempt at refund. That is, Sir, a very moderate arrangement; and both equity and uniformity require such a consequential amendment. So, Sir, I commend this amendment to the acceptance of the House.

MR. N. K. KRISHNA PILLAI (*Neyyattinkara I*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment. This will be the unkindest cut of all. The previous amendment at any rate affected only the

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[Mr. Kayalam Paramesvaran Pillai.]

interest that had to be paid. We must anyhow thank Mr. Narayana Pillai for saying that the creditor will not be asked to refund some money to the debtor. But, even as it is, I think that it is more unjust that the creditor should be asked to appropriate this excess payment towards the principal.

The amendment was put to the vote of the House and declared lost.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I move the following amendment:

Add the following Proviso to Clause 34:—

"*Provided that nothing in this Section shall apply to any interest not paid during the said period of three years*".

In view of the amendment already passed, this Proviso is necessary though not adequate. At least there will be a show of compensation. I may say, Sir, that this was also one of the recommendations of the Debt Redemption Committee. They said that a creditor should be paid at least the reduced interest within the period fixed. My amendment only requires that the recommendation of the Debt Redemption Committee be brought into effect so that there may be at least a show of justification for the act of high handed robbery just committed by the House by passing the last amendment.

PRESIDENT: Who seconds this anti-robbery amendment?

MR. K. P. KRISHNA MENON (*Parur*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I do not oppose the amendment.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Sir, I oppose the amendment. It has been stated that the concession will operate only for three years. We have to see what will happen after that period. Nobody stated that these concessions will continue after the lapse of three years. Therefore I see no justification for this amendment.

The amendment was then put and declard lost.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I demand a poll.

A poll was taken and the House divided as follows:

AYES—25.

1	Mr.	N. Abdur Rahiman Sahib	14	Mr.	R. Sivaraman Nair
2	,,	M Mahomed Haneef	15	,,	M. K. Janardana Kamath
3	Miss.	Hepzibah Gnanasikamony	16	Rao Bahadur Dr.	N. Kunjan Pillai
4	,,	J. M. Joseph	17	Mr.	T. C. Thommen
5	,,	S. Chattanatha Karayalar	18	,,	K. N. Kesava Pillai
6	,,	T. S. Jayantan Nambutiri	19	,,	C. V. Chandrasekharan
7	,,	N. John Joseph	20	,,	G. B. E. Truscott
8	,,	T. T. Kesavan Sastri	21	Vaidya Sastra Kusala Dr. (Mrs.)	Poonen Lukose
9	,,	K. P. Krishna Menon	22	Mr.	M. Govinda Pillai
10	,,	P. C. Narayanan Bhattatiripad	23	,,	C. O. Madhavan
11	,,	K. C. Karunakaran	24	,,	K. George
12	,,	K. Padmanabhan	25	,,	Kayalam Paramesvaran Pillai
13	,,	R. Sambasiva Aiyar			

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NOES—27.

1	Mr.	K. C. Abraham	16	Mr.	Changanacherry K. Parameswaran Pillai
2	,,	T. K. Alexander	17	,,	S. Tiraviam Nadar
3	,,	V. T. Chacko	18	,,	N. E. Varughese
4	,,	S. J. Nair	19	,,	K. Kunjukrishna Pillai
5	,,	A. Thanu Pillai	20	,,	Pacode A. Narayana Pillai
6	,,	Antony George	21	,,	N. K. Krishna Pillai
7	,,	S. Nilakanta Pillai	22	,,	Kainikkara M. Padmanabha Pillai
8	,,	T. C. Joseph	23	,,	Edavanatt S. Padmanabha Menon
9	,,	K. M. Krishnan	24	,,	Pottayil S. Krishna Panickar
10	,,	E. K. Kunjuraman	25	,,	M. K. Madhavan Pillai
11	,,	K. Mahomed	26	,,	V. K. Velappan Nair
12	,,	K. M. Kuriakose	27	,,	G. Nilakantan
13	,,	V. Ramakrishna Panicker			
14	,,	R. Raman Pillai			
15	,,	P. K. Thomas			

NEUTRALS—6.

1	Srimati T. Narayani Amma		4	Mr.	A. S. Damodaran Asan
2	Mr.	K. Madhavan	5	,,	A. Easwara Pillai (*Kalkulam II*)
3	,,	Puthupalli S. Krishna Pillai	6	,,	T. P. Velayudhan Pillai

The amendment was declared lost.

The question that Clause 34, as amended, do form part of the Bill was then put and carried.

Clause 35.

MR. S. NILAKANTA PILLAI (*Chirayinkil II*): Sir, I beg to move that Clause 35 be deleted. Sir, this is an amendment which is consequential to the amendment which has already been carried, reducing interest to 6 per cent. from 1-1-1105 to the date of commencement of this Regulation. The interest is proposed to be reduced whether the debt be secured or not. With regard to secured debt, the Clause says that the interest shall be six per cent. In regard to unsecured debt, an amendment has already been carried, and so this Clause is unnecessary. I, therefore, move that this Clause be deleted.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): Sir, I second the amendment. I have also sent in a similar amendment. By this Clause, a distinction is sought to be made between secured and unsecured debts with regard to interest. I think this distinction is unnecessary. After all, the debts have to be paid by the agriculturists. And our intention is to provide these concessions for the agriculturists. I, therefore, think that the Clause may be deleted.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I rise to support the amendment. As far as agriculturists are concerned, we are having an amendment to the Civil Procedure Code to the effect that they should be arrested only under certain circumstances. That means that hereafter creditors will insist upon sufficient security for the loans advanced

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to them. Thus the Agriculturists have to give security and only six per cent. will be allowed on such secured debt. If this Clause were to be applicable to all people, I would not have objected to it. But when it is applied only to the agriculturists, that means that we are going to ruin the agriculturists as far as future transactions are concerned. I feel that it will not be in the interests of the agriculturists to allow the Clause to stand, without proper amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, I oppose the amendment. Mr. Asan has correctly put what will happen if this clause is deleted. What will happen is that an agriculturist can be compelled, to pay even twelve per cent. if he agrees to pay such interest. If this Clause is allowed to be retained, the agriculturist cannot be asked to pay more than six per cent. on secured debts or nine per cent. on unsecured debts. It is said that the agriculturist is victimised by the money-lenders. In view of that, it is necessary to limit the interest to six per cent. on secured debts and nine per cent. on unsecured debts. Perhaps, he may have some difficulty in getting credit if this Clause is passed. But it will be advantageous to him to have a limit put to the interest recoverable. For these reasons, I oppose the amendment.

The amendment was put to the vote and declared lost.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I demand a poll.

A poll was taken with the following result:

AYES—15.

1 Mr. V. T. Chacko
2 Rao Sahib S. Paramesvara Aiyar
3 Mr. S. J. Nair
4 ,, S. Nilakanta Pillai
5 ,, S. Chattanatha Karayalar
6 ,, T. S. Jayantan Nambutiri
7 ,, T. C. Joseph
8 ,, K. Mahomed
9 Mr. K. C. Karunakaren
10 ,, R. Sambasiva Aiyar
11 ,, K. Kunjukrishna Pillai
12 ,, A. S. Damodaran Asan
13 ,, R Sivaraman Nair
14 ,, M. K. Madhavan Pillai
15 ,, M. K. Janardana Kamath.

NOES—32.

1 Mr. K. C. Abraham
2 ,, N. Abdur Rahiman Sahib
3 ,, T. K. Alexander
4 ,, M. Mahomed Haneef
5 ,, A. Thanu Pillai
6 ,, K. R. Elenkath
7 ,, Antony George
8 ,, J. M. Joseph
9 ,, N. John Joseph
10 ,, T. T Kesavan Sastri
11 ,, E. K. Kunjuraman
12 ,, P. C. Narayanan Battatiripad
13 ,, K. Madhavan
14 Mr. R. Raman Pillai
15 ,, P. K. Thomas
16 ,, N. E. Varughese
17 ,, S. Thiraviam Nadar
18 ,, Pacode A. Narayana Pillai.
19 N. K. Krishna Pillai
20 ,, A. Easwara Pillai (Kalkulam II)
21 ,, Pottayil S. Krishna Panikkar.
22 ,, G. Nilakantan
23 Rao Bahadur Dr. N. Kunjan Pillai.

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NOES—(*Contd*)

24 Mr. T. C. Thommer.	29 Mr. M. Govinda Pillai
25 ,, K. N. Kesava Pillai	30 ,, C. O. Madhavan
26 ,, C. V. Chandrasekharan	31 ,, K. George
27 ,, G. B. E. Truscott	52 , Kayalam Paramesvaran Pillai.
28 Vaidya Sastra Kusala Mrs. Poonen Lukose	

NEUTRALS—12.

1 Miss Hepzibah Gnanasikhamany	8 Mr. Changanacherry K. Paramesaaran Pillai
2 Mrs. T. Narayani Amma	9 ,, Kainikkara M. Padmanabha Pillai
3 Mr. K. P. Krishna Menon	10 ,, Edavanat S. Padmanabha Menon
4 ,, K. M. Krishnan	11 ,, V. K. Velappan Nair
5 ,, K. M. Kuriakose	12 ,, T. P. Velayudhan Pillai.
6 ,, V. Ramakrishna Panicker	
7 ,, K. Padmanabhan	

The amendment was declared lost.

The House rose for lunch at 1 P. M. and met again at 2 P. M. with the Deputy President in the Chair.

DEPUTY PRESIDENT : Mr. N. K. Padmanabha Pillai, Director of Registration, has, I am informed, been appointed a member in this Assembly in the place of Vaidya Sastra Kusala Dr. (Mrs.) Poonnen Lukose who has resigned. On a previous occasion, I said, that ordinarily no member may be allowed to take the oath in the afternoon. However, if it is unavoidable that may be considered.

RAO BAHADUR DR. N. KUNJAN PILLAI (*Chief Secretary to Government*) : Sir, Mrs. Lukose had to resign for certain unavoidable reasons and Mr. N. K. Padmanabha Pillai has to be sworn in. There was a precedent also, in this House in respect of this matter.

OATH OF OFFICE.

Mr. N. K. Padmanabha Pillai, Director of Registration then took the oath and signed the Rolls.

DEPUTY PRESIDENT : We shall now resume the discussion of the Travancore Agriculturists' Relief Bill.

Clause 35 (*contd.*)

MR. R. SAMBASIVA AIYAR ((*Kunnatnad II*) : Sir, I beg to make the amendment standing in my name.

Add the following Proviso to Clause 35 :

"*Provided that nothing in this Section shall apply to any interest not paid during the said period of three years.*"

My submission is that it will be only fair that the Proviso is added to the Clause in view of the fact that there should be a limitation of interest on future debts. Hence I move the amendment.

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MR. T. S. JAYANTAN NAMBUTIRI (*Travancore Jenmies, North*) : I second it.

MR. KAYALAM PARAMESVARAN PILLAI ((*Additional Head Sirkar Vakil*) : Sir, nothing substantial is gained by this amendment.

The amendment was put to vote and lost.

MR. S. J. NAIR (*Nedumangad*) : I beg to move two amendments Nos. 277 and 284 together.

DEPUTY PRESIDENT : What is the import of 277?

MR. S. J. NAIR (*Nedumangad*) : Just to have a uniformity of interest of 6 per cent.

DEPUTY PRESIDENT ; Please read the Clause with your amendments.

MR. S. J. NAIR (*Nedumangad*) : The Clause then reads thus.

> "Notwithstanding anything in any law, contract, decree or order of court, no interest shall accrue or be permitted to be recovered as accruing, for a period of three years from the date of the commencement of this Regulation, in respect of any debt arising after such date at any rate exceeding six per cent. per annum".

My object is this. Those who have given security for the debts incurred by them have to pay only lower rate of interest. People, who are not in a position to give any security in the matter of raising loans, have to pay a higher rate of interest. People who have given security, according to me, are people who are in a position to pay and therefore they should pay higher rate of interest than the other class of people. My submission therefore is that people who are compelled to pay 9 percent interest because of their inability to give a security, should also pay only 6 per cent. interest. It is only just that 6 per cent. interest alone is levied

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*) : I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I oppose the amendment. The effect of the amendment is to lay down that, both for secured and unsecured debts, interest shall be at 6 per cent. This will be highly injurious to the agriculturists, because, for one thing, hereafter no agriculturist will be getting any accommodation except on security. If both the secured and unsecured debts are to carry a uniform interest, the creditor will naturally demand security in every case. He will never advance money to the agriculturist without any security. One, if not the only, incentive for a creditor to advance money without security will be the additional interest. If you take away that incentive, nobody will advance money without security.

MR. S. J. NAIR (*Nedumangad*) : What about the debt incurred by an agriculturist without giving any security?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : What has already been done cannot be helped.

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MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Because there is difference between the interest at present, does the Law Member think that the number of debts has increased ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : On principle, it is right to allow such differential interest on secured loans and unsecured loans. A higher rate is charged on unsecured loans in view of the difficulty in getting back the loan. In regard to secured debts, there is not as much difficulty to recover the money. Any limitation by statute, in regard to the interest that may lawfully be recovered from the agriculturist, should be made in such a way as to allow a loan being raised whenever needed. If the interest is limited always to 6 per cent. what is the gain to a creditor in advancing money without security?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Is that the case now ?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Wherever loan is given on security, creditors are prepared to accept a lower rate of interest. If it is an unsecured loan, they will demand higher rate of interest. All that I wish to say is that, if you are prepared to do a bad turn to the agriculturist, alright, do it by accepting Mr. S. J. Nair's amendment.

The amendment was then put to vote and lost.

DEPUTY PRESIDENT : The question is that Clause 35 with the Explanation stand part of the Bill.

The motion was put and carried. The Clause was added to the Bill.

Clause 36.

MR. S. NILAKANTA PILLAI (*Chirayinkil II*): I may be permitted to move together the amendments Nos. 290, 293, 297 and 301.

DEPUTY PRESIDENT : Will it not go counter to other Clauses already accepted by the House ?

MR. S. NILAKANTA PILLAI (*Chirayinkil II*) : No, Sir. The Clause will read thus :

> "Notwithstanding anything in any law, contract, decree or order of court, no interest shall be considered to have accrued or to accrue or be permitted to be recovered as accruing from and after the 1st of Chingom 1105 up to the termination of three years from the date of the commencement of this Regulation in respect of any debt, due in paddy or grain, at any rate exceeding six per cent per annum".

Sir, the original Clause provides for 9 per cent. interest from the date of the commencement of the Regulation up to the expiry of three years. The Clause as amended by me would go up to the year 1105 and reduce interest to 6 per cent.

DEPUTY PRESIDENT : So according to you it will have a retrospective effect and at the same time reduce interest.

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MR. S. NILAKANTA PILLAI (*Chirayinkil II*) : Yes Sir. This Bill is intended to give relief to the agriculturists. By the amendment we have carried with regard to Clause 34 the interest has been reduced to six per cent. That may be of help to some of the agricultural debtors. But there is a large number, at least, half of them who take paddy loans, because that is convenient to them. In this respect I will read a portion of the Report of the Agricultural Debt Redemption Committee which will justify my amendment.

> "The system of paddy loans is, for the most part, confined to Kuttanad. The cultivation of the paddy fields of this tract requires the expenditure of large amounts of money as well as paddy, a good portion of which is borrowed. The rates of interest on paddy loans are high, ranging from 12 to 20 per cent. apart from several other charges incidental to paddy loans. We understand from the evidence given by both creditors and debtors that large quantities of paddy loans remain unpaid. The agriculturists of the region are in eneral heavily involved in debt and faced with the prospect of losing their lands on account of utter inability to discharge their debts. (Vide paragraphs 37 and 38.) The Committee consider that substantial relief should be afforded to the large agricultural population of this important f od-producing area. One method of achieving this object is to bring about an equitable reduction in the rates of interest on paddy loans.
>
> The Committee, therefore, proposed that the interest on the paddy debts outstanding on the date of the new enactment should be paid at one-half the contract rate or 6 per cent. whichever is larger, if payment is made within one year from the date of enactment and such further period as Government may fix from time to time. But if the contract rate is lower than 6 per cent. such lower rate alone should prevail."

From this it is clear that there is a large portion of the agriculturists who take paddy loans. If such a class of people are not given any relief by this enactment, the relief, if at all, afforded by the amendment to Clause 34 would remain incomplete. In order to make relief complete, my submission is that the people, especially the Kuttanad people who have taken paddy loans, must also be made to benefit by this Bill. The rate of interest existing with regard to paddy loans also should be reduced to six per cent. Then there may arise one difficulty. Clause 37 of the Bill says that future paddy loans should be converted into money. So also I submit that paddy loans outstanding on the first of Chingom 1105 should be converted into money and the rate of interest should be reduced as we have done in the case of money loans by the amendment of Clause 34.

MR. KAYALAM PARAMESWARAN PILLAI (*Additional Head Sirkar Vakil*): May I know which is the amendment to convert paddy into money?

MR. S. NILAKANTA PILLAI (*Chirayinkil II*) : There is no amendment tabled to convert paddy into money. If this amendment is carried a consequential amendment to that effect can be introduced and accepted by this House.

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DEPUTY PRESIDENT : The Law Member is putting you a question as to which is the wording of the amendment which enables you to say that.

MR S. NILAKANTA PILLAI (*Chirayinkil II*); Sir, there is no such amendment in this Bill. In the Bill there is a provision, Clause 37, which enables to convert future paddy loans into money loans. The conversion of paddy loans outstanding on the first of Chingom 1105 has been recommended by the Debt Redemption Committee.

MR. K. R. ELENKATH (*Kalkulam I*) : I second it.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*) : Sir, I may be permitted to move some of my amendments together which are substantially identical and I have consolidated all those amendments into this form so that:—

DEPUTY PRESIDENT : Your amendments are Nos. 292, 294, 298, 300 and 306.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*) : Not only these amendments. In view of the changes that have been made to Clause 34, I have redrafted it to be consistent with that Clause. The re-drafted clause will read thus :—

> "Notwithstanding anything in any law, contract, decree or order of court, no interest shall accrue, or be permitted to be recovered as accruing from and after the first of Chingam 1105 up to the termination of three years from the dat of commencement of this Regulation in respect of any debt, due in paddy or grain, and in existence on the date of commencement of this Regulation, at any rate exceeding six per cent per annum."

DEPUTY PRESIDENT : Does Mr. Nilakanta Pillai accept the amendment.

MR. S. NILAKANTA PILLAI (*Chirayinkil II*) ; No. I do not accept that amendment.

MR. C. V. CHANDRASEKHARAN (*Ag. Director of Public Instruction*) : I rise to a point of order. Has Mr Nilakanta Pillai's amendment been seconded ?

DEPUTY PRESIDENT : Yes.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*) : I have nothing more to say except to suggest to bring paddy loans also on a par with other loans. A reduction of interest on those transactions is also necessary. By a variety of methods, creditors to whom paddy loans are due are exacting very high rates of interest. So I am putting the same rate of interest with regard to paddy also.

MR. S. J. NAIR (*Vedumangad*) : Sir, I second all the amendments proposed by the Honourable member Mr. Kunjukrishna Pillai.

DEPUTY PRESIDENT : He has proposed only one amendment.

MR. S. J. NAIR (*Nedumangad*) : He has put all his amendments together. In supporting his amendment, I submit for the information of the House that the people of Kuttanad have been groaning under paddy loans. Whatever might be said against the interest of the Kuttanad agriculturists by any interested money-lenders or bankers in the State, it is evident that, but for the kindly help by raising an

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[Mr. S. J. Nair.]

agitation from one part of the country to the other and by forming themselves into a strong association, the Kuttanad agriculturists in the State would not have.—

DEPUTY PRESIDENT: Do bankers lend paddy?

MR. S. J. NAIR (*Nedumangad*): Yes, bankers in Kuttanad. The agriculturists in the State ought to be very much indebted to the Agricultural Association of Kuttanad for the services that it has rendered to the State.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I oppose the amendment drafted in accordance with the amendment that has been effected to Clause 34 of the Bill. One of the grounds advanced for reducing interest on money and that with retrospective effect, is that the price of commodities has gone down and as a result the people are not able to return the amounts that have been borrowed by them before 1105. As far as paddy is concerned, that argument cannot hold good. The price of paddy that was borrowed before 1105 was seven or eight fanams per *parah* and the price that it fetches now is only 3 or $3\frac{1}{2}$ fanams So a person who has lent paddy before 1105, even if interest was calculated at 20 per cent, will not get much more than the value of the principal at the time of the transaction even if both the whole of principal and interest are sold now. So I think in regard to paddy, the argument that price has gone down does not in the least apply. But on the other hand, if we carrying logical consequences the arguments advanced in support of Clause 34.—

MR. A. THANU PILLAI (*Trivandrum-Rural*): May I know whether this is not an argument against the clause as it is also?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Now I am opposing the amendment that is before the house.

Sir, if we are to carry to logical consequences the arguments advanced in support of Clause 34, we must ask the debtors to pay twice the amount they have borrowed before 1105 so as to recoup the loss to the creditor. If we want to give retrospective effect, we must be convinced that there is absolute necessity.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Is there anything in the amendment to suggest that the paddy may be returned in money?

MR. A. S. DAMODARAN ASAN (*Mavelikara*): No, nothing. That is what I am coming to. So, decrease in the price is not an argument in support of the same. On the other hand, in answer to the question put by the Law Member we find that the courts in the land do not enforce payment of paddy in kind. On the other hand, option is given to the debtor either to return the paddy in kind or to pay the price of the same at the *nirak* rate prevailing on the date of the suit or on the date of the execution application. So there is no compulsion that money should be paid for the paddy. When we come to the enforcibility of the same, the court says that payment may be made in money. So I think it will be hard and inequitable for the State to withdraw the

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guarantee that has already been given to the subjects of the State who have entered into dealings on the basis of the law existing at the time. With these words, I oppose the amendment.

MR. K. C. ABRAHAM (*Kottayam II*): I wish to speak a few words on this amendment. In line with the amendment to Section 34, it is only right generally to reduce interest on paddy loans also. The only argument-and that a superficial argument-brought forward by Mr. Asan against a reduction is that paddy is payable as paddy and therefore the low price of paddy does not affect the situation. Reduction in the price of paddy does not come into operation because paddy is payable as paddy with interest and therefore the question of interest may not be affected. Well, Sir, there is one particular factor to be considered. As I expressed in the morning, it is not exactly on the price of raw products that the question depends. If we consider the whole question of reduced price of raw products of agriculture, the fallacy arises. The question has to be considered from the point of view of capital and labour involved. If that is taken into account, Mr. Asan will find that there is appreciable reduction in the product of agriculture. I am not refering to the yield. Though there may be low yield, I take it that the yield was as it was about 10 years ago; but there is one fact to be considered. Mr. Asan, I hope, will understand that the expenditure on agricultural operations is not all incurred in paddy. A great portion of the expenditure has to be incurred in money and that money has to be found out of the produce of the land. When the land yields a certain amount of paddy, be it as it was before, the expense has to be met by translating that into money; and if you get less money, the yield is less. Therefore that is the ground upon which I wish to support this amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): What is the present permissible rate for paddy loan?

MR. K. C. ABRAHAM (*Kottayam II*): I think it is 18 per cent.

As regards the reduction, I only make a prayer to the Chair that as in the previous case this may be put in parts. If the question of reduction is first put, the question will remain whether it should be 6 per cent. or 9 per cent.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose all these amendments. First of all, I want to make one point perfectly clear. Everywhere when any loan is taken or given, it is always computed in terms of the currency whether it be rupees, annas, pies or pounds, shilling, pence or the like. But in Travancore, paddy has always been treated like currency, apparently because it was an article of universal consumption. Therefore transactions were entered into by parties in terms of paddy and parties borrowed paddy and agreed to repay in paddy with interest also calculated in paddy. This was so universal in Travancore and it is surely more than a century old and the law always took notice of it and the law to-day is that, if there is a loan made in paddy, it is open to the court, and the court in fact ought, to give a decree in terms of paddy. The court can also order that the debtor pay the creditor in money computing the

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[Mr. Kayalam Paramesvaran Pillai.]

value of the paddy at the current price. In other words paddy has been treated as good as currency money. Loaning in paddy and accepting return in paddy involved some loss to the creditor because paddy returned may be bad paddy and may not be quite so good as that lent and it may be very difficult to find it out or prove it and there is also the difficulty in storing and preserving paddy. There are various difficulties attendant on storing paddy and loaning of paddy and receiving it back in paddy, whereas in the case of loans in money, there are no such difficulties. Therefore the law in this country for over a century has been, that, even though the permissible rate of interest in respect of money was but 12 per cent. it may, in the case of paddy, be as high as 18 per cent. This difference is based on sufficient reason. It means that the law recognises that in the case of loans in paddy a larger return was necessary than when money was advanced as loan. If this fact is recognised and if it is also remembered that we have already passed clauses to fix interest on money loans at 6 per cent. it will be conceded at once that, it is only right that we should fix some larger rate of interest in regard to paddy loans. The clause, as it is, provides for interest at 6 per cent. only. By the 1010 Regulation the permissible rate of interest on money loans is 12 per cent and for paddy loans, it is 18 per cent.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*): It was 20 per cent. and not 18 per cent.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Perhaps The 18 per cent. applies in case of the paddy dues to the Jenmi and 20 per cent in other cases. Anyway it does not matter much. When we provide 6 per cent. as the interest rate for money which now is 12 per cent. that is to say when the interest rate on money is reduced to half, it must naturally follow that the 20 per cent. interest rate in case of paddy loans should be reduced by one half too or 10 per cent. If that is borne in mind, it will be seen how just and right it is that we should now fix a higher rate of interest for paddy. Accordingly, a higher rate has been provided for paddy in the Bill. Therefore the argument that we have already accepted a 6 per cent. rate for money is no argument to say that for paddy also the same 6 per cent rate should be fixed. A differential rate is necessary. I maintain therefore that the rate of 9 per cent. proposed in the Bill for paddy loans must be retained.

In regard to giving this reduction in rate a retrospective effect from 1105, I shall not add anything to what I have already said on a previous clause. Mr. Nilakanta Pillai wants that this rate of 6 per cent. for paddy loans must apply in regard to paddy loans given even after the commencement of this Regulation. Perhaps, Mr Nilakanta Pillai expects that hereafter an owner of paddy will advance paddy to be returned in paddy with 6 per cent. interest. If he expects so, he expects an impossibility. He can as well expect the sky to come down. The result will be that there will be no paddy loans hereafter. In this country it is considered

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that there is some particular advantage in advancing a loan in paddy to be returned in paddy. There may be difference of opinion on this point. I am merely stating one view. The agriculturists are possessed of paddy and therefore it is convenient for them to make a loan in paddy and the debtor generally earns in paddy and it is convenient to him to return in paddy. It is proposed in the Bill, no doubt, that hereafter paddy loans should be treated as money loans. That is done on certain other considerations. But apart from that, it is considered convenient for agriculturists to take loans in paddy and return in paddy. And if Mr. Nilakanta Pillai wants that system to be continued, if hereafter too loans should be advanced in paddy and returned in paddy, then certainly he must provide a higher rate of interest and not fix it at 6 per cent.

There is one further provision in the amendment which I should advert to. It is proposed that no interest shall be considered to have accrued. I did not quite understand what he meant. Perhaps what is meant is that, if interest had already been paid, it should be refunded by the creditor to the debtor. It is certainly open to Mr. Nilakanta Pillai to propose so. But a more outrageous proposal I cannot think of, Sir.

MR. A. THANU PILLAI (*Trivandrum—Rural*): Consistently with the amendment that we have passed in respect of money loans, I think this House ought to give the benefit of this reduction in the case of paddy loans also from the commencement of the year 1105. So far as that is concerned, I support this amendment.

Then in regard to rate of interest, I am prepared to agree with the Law Member that the rate of interest in respect of paddy loans should be something higher than the rate of interest for money and the 9 per cent. fixed may be adopted.

In regard to the third point involved in the amendment, as to whether it should be applicable to the debts in existence on the date of the commencement of the Regulation, there is some difference of opinion in the House. Hereafter if all paddy loans are treated as money loans, then I think the words "in existence on the date of the Regulation" should be allowed to remain in clause 36. I make these observations and also make a request to the Chair that these points may be separately put to vote.

DEPUTY PRESIDENT: I have asked the movers of both the amendments to put in form their amendments. It is being prepared. It will take a few minutes.

MR. A. THANU PILLAI (*Trivandrum-Rural*): It is rather to make this applicable to interest accruing from the beginning of 1105.

DEPUTY PRESIDENT: I could have removed this difficulty if the actual wording was before me. The amendments are being type-written in the office and I am waiting for them.

Now that the typewritten amendments have come, I shall put to the vote of the House the following portion of the amendment:

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[Deputy President]

"Notwithstanding anything in any law, contract, decree or order of court, no interest shall be considered to have accrued or to accrue, or be permitted to be recovered as accruing from and after the 1st of Chingom 1105 up to the termination of three years from the date of the commencement of this Regulation in respect of any debt due in paddy or grain".

The amendment was put to vote and declared carried.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I demand a poll.

A poll was accordingly taken with the following results:

AYES—26.

1	Mr. K. C. Abraham	17	Mr. K. Kunjukrishna Pillai
2	,, V. T. Chacko	18	,, Pacode A. Narayana Pillai
3	,, M. Mahomed Haneef	19	,, N. K. Krishna Pillai
4	,, S. J. Nair	20	,, A. Easwara Pillai, (*Kalkulam II*)
5	,, A. Thanu Pillai	21	,, A. Easwara Pillai, (*Kottarakara*)
6	,, K. R. Elenkath	22	,, Kainikkara M. Padmanabha Pillai
7	,, P. C. Kuriyan	23	,, Edavanatt S. Padmanabha Menon
8	,, S. Nilakanta Pillai	24	,, Pottayil S. Krishna Panickar
9	,, T. C. Joseph	25	,, V. K. Velappan Nair
10	,, K. M. Krishnan	26	,, G. Nilakantan
11	,, E. K. Kunjuraman		
12	,, K. Mahomed		
13	,, K. M. Kuriakose		
14	,, K. Madhavan		
15	,, R. Raman Pillai		
16	,, P. K. Thomas		

NOES—24.

1	Mr. N. Abdur Rahiman Sahib	12	Rao Bahadur Dr. N. Kunjan Pillai
2	Rao Sahib S. Parameswara Iyer	13	Mr. T. C. Thommen
3	Mr. Antony George	14	,, K. N. Kesava Pillai
4	,, J. M. Joseph	15	,, C. V. Chandrasekharan
5	,, S. Chattanatha Karayalar	16	,, G. B. E. Truscott
6	,, T. S. Jayantan Namputiri	17	,, Kayalam Parameswaran Pillai
7	,, N. John Joseph	18	,, C. O. Madhavan
8	,, K. P. Krishna Menon	19	,, K. George
9	,, P. C. Narayanan Bhattathiripad	20	,, N. K. Padmanabha Pillai
10	,, V. Ramakrishna Panickar	21	,, M. Govinda Pillai
11	,, K. Padmanabhan	22	,, A. S. Damodaran Asan
		23	,, R. Sivaraman Nair
		24	,, M. K. Janardana Kammath

NEUTRALS—8.

1	Mr. T. K. Alexander	5	Mr. Puthupalli S. Krishna Pillai
2	Miss Hepzibah Gnanasikamony	6	,, M. K. Madhavan Pillai
3	Mr. T. T. Kesavan Sastri	7	,, T. P. Velayudhan Pillai
4	,, S. Thiraviam Nadar	8	,, M. Sivathanu Pillai

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The amendment was declared carried, 26 voting for, 24 against and 8 remaining neutral.

DEPUTY PRESIDENT: The next point to be voted upon is the rate of interest.

In the clause we find 'at any rate exceeding 9 per cent. per annum. Both the amendments say—'the date of commencement of the Regulation at any rate exceeding 6 per cent. per annum.' In the Explanation also the amendment is "to substitute 6 per cent. wherever the words 9 per cent. occur". The question to be voted upon now is whether 6 per cent. or 9 per cent. has to be retained in the clause. The amendment is for 6 per cent. I shall put that to the vote of the House.

The amendment was put to the vote and declared lost.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I demand a poll.

A poll was accordingly taken with the following results:—

AYES—17.

1	Mr. M. Mahomed Haneef	11	Mr. N K, Krishna Pillai
2	,, S. J. Nair	12	,, A. Easwara Pillai (*Kalkulam II*)
3	,, K. R. Elenkath	13	,, A. Easwara Pillai (*Kottarakara*)
4	,, P. C. Kuriyan	14	,, Edavanatt S. Padmanabha Menon
5	,, S. Nilakanta Pillai	15	,, Pottayil S. Krishna Panickar
6	,, K. M. Krishnan	16	,, M. K. Madhavan Pillai
7	,, K. Mahomed	17	,, V. K. Velappan Nair
8	,, K. M. Kuriakose		
9	,, K. Kunjukrishna Pillai		
10	,, Pacode A. Narayana Pillai		

NOES—32.

1	Mr. K. C. Abraham	17	Mr. P K. Thomas
2	,, N. Abdur Rahiman Sahib	18	,, K, Padmanabhan
3	,, T. K. Alexander	19	Rao Bahadur Dr. N. Kunjan Pillai
4	Rao Sahib S. Parameswara Iyer	20	Mr. T. C. Thommen
5	Mr. A. S. Damodaran Asan	21	,, K. N. Kesava Pillai
6	,, A. Thanu Pillai	22	,, C. V. Chandrasekharan
7	,, Antony George	23	,, G. B. E Truscott
8	,, J. M. Joseph	24	,, Kayalam Parameswaran Pillai
9	,, S. Chattanatha Karayalar	25	,, K. George
10	,, T. S. Jayantan Namputiri	26	,, C. O. Madhavan
11	,, N. John Joseph	27	,, M. Govinda Pillai
12	,, T. T Kesavan Sastri	28	,, N. K. Padmanabha Pillai
13	,, K. P. Krishna Menon	29	,, R. Sivaraman Nair
14	,, P. C. Narayanan Bhattatiripad	30	,, Kainikkara M. Padmanabha Pillai
15	,, V. Ramakrishna Panickar	31	,, M. K. Janardana Kammath
16	,, R. Raman Pillai	32	,, G. Nilakantan

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NEUTRALS—9.

1 Mr. V. T. Chacko	6 Mr. S. Thiraviam Nadar
2 Miss Hepzibah Gnanasikamony	7 „ Puthupalli S. Krishna Pillai
3 Mr. T. C. Joseph	
4 „ E. K. Kunjuraman	8 „ T. P. Velayudhan Pillai
5 „ K. Madhavan	9 „ M. Sivathanu Pillai

The amendment was declared lost, 17 voting for, 32 against and 9 remaining neutral.

DEPUTY PRESIDENT. Is there any other amendment which is proposed to be moved to that Clause?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, may I know whether you have put to vote the provision 'considered to have accrued'?

MR. A. THANU PILLAI (*Trivandrum-Rural*): Sir, Mr. Nilakanta Pillai's amendment covers the words 'in existence on such date'. The question has not been put whether they should be retained or deleted.

DEPUTY PRESIDENT: I read out Mr. Nilakanta Pillai's amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, the words 'shall be considered to have accrued' is an important provision.

DEPUTY PRESIDENT It was because of these difficulties that I insisted on having the text of the amendment. I read out the amendment.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): Sir, the wording 'in existence at the date of the Regulation' has to be put to vote.

DEPUTY PRESIDENT: I find that some of the members have got a difficulty in this matter. It may be legitimate but I am only concerned with this that I put from the Chair the amendment in the present wording to the vote of the House and unless in very exceptional cases when you seek a remedy, I do not think that can be varied from.

MR. A. THANU PILLAI (*Trivandrum—Rural*): Sir, being a very important matter and the attention of the House not having been drawn to the words specifically at the time of voting—

DEPUTY PRESIDENT: I object to that statement. The House had to wait for some minutes before the typewritten amendments were made available to the Chair and then the amendment was read out. After that, to say that the House has no notice, I think, is not correct.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): May I submit a word, Sir? At first we thought the principle that this will begin to operate from the 1st of Chingom 1105 was alone put to vote. Then we voted for that. The second principle was whether it should be 6 per cent. or 9 per cent. and we voted on that also. Only these two principles have been voted upon. As to whether it should be deemed to have accrued was not voted upon. So also whether it should be deemed to be in existence at the date of the commencement of the Regulation was not voted upon.

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DEPUTY PRESIDENT: I read the whole of the amendment up to the last line. At first I announced that I was going to put two points to the vote of the House. I did not want to rely upon my memory. So I insisted that the movers of both the amendments shall put their amendments in form. I got them typed by the office and I read out the whole amendment reserving only the portion relating to the rate of interest. That was put to vote and the amendment was passed.

MR. A. THANU PILLAI (*Trivandrum-Rural*): In that case, may I suggest that the Law Member may bring an amendment at the time of the third reading of the Bill in order to bring this provision into conformity with the clause that we have already adopted?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I shall not give any such undertaking, Sir.

MR. K. C. ABRAHAM (*Kottayam II*): May I make a suggestion, Sir?

DEPUTY PRESIDENT: If you move a formal proposition, I shall consider that.

MR. K. C. ABRAHAM (*Kottayam II*): I will make the suggestion; and, if after hearing it, the chair permits me to move it formally, I shall do so.

The Clause contains four main factors. One is whether interest should be reduced; another is what should be the quantum of reduction; the third is whether the interest which is to be deemed to be accruing should be taken into account; and the fourth is whether it should apply to debts in existence on the date of the commencement of this Regulation. Sir, we have been driven into an anomalous situation as a result of the voting that has taken place.

DEPUTY PRESIDENT: I do not want to reopen the verdict of the House. Will the mover of the Bill explain to me if that should be done as an exceptional case? If the House thinks that the amendment as now carried by the House collides with some of the earlier clauses already passed, or that it has led us to some serious mistake which the House had no notice of at the time they voted upon it, I shall reconsider the question.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I merely wanted to know what exactly is the amendment that now holds the field. I do not think that the amendment that has been carried will *collide* with any of the earlier clauses that have been already passed. I thought the insertion of the expression 'shall be considered to have accrued' was not put to the vote of the House.

DEPUTY PRESIDENT: I read the whole of it before I put it to vote. Is it the view of the House that the question should be reopened?

MR. S. CHATTANATHA KARAYALAR (*Shencotta*): The question has been voted upon by the House. It will be an indignity to the House if the matter is now reopened. We will be setting up a bad precedent if we do it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If the whole of it *had been* put to vote, certainly, it should not be reopened.

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DEPUTY PRESIDENT : It has been put.

The question that Clause 36, *as amended*, do form part of the Bill, was put to vote and carried and the Clause was added to the Bill.

Clause 37.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : Sir, I beg to move the following amendment :

"*Delete Clause 37*".

According to this Clause, future paddy loans should be treated as money loans. As was observed by the Law Member when he was speaking on the previous amendment, paddy loans are really necessary for carrying on cultivation. Paddy has all along been considered loanable and returnable as paddy itself. If the paddy is not returned, the creditor has to institute a suit for the return of the paddy due or, in the alternative, for the payment of the price of the paddy due at the market rate obtaining on the date of the suit. Therefore, Sir, at present, the law gives the debtor the alternative to pay in kind or in money, as it would suit him. The present provision in the Bill takes away such option, since it entitles the creditor to enforce the payment of the price of the paddy due in cash.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Does not the member recognise that the clause that has just now been passed provides for paddy loans that are to come into existence after the commencement of this Regulation ?

MR. A. S. DAMODARAM ASAN (*Mavelikara*) : That provision will be in force only for three years after the commencement of this Regulation, whereas the present Clause, No 37, is to be in force for ever.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : The idea apparently is that for three years after the commencement of this Regulation, Clause 36 should operate, and that, afterwards, Clause 37 should operate.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : I am submitting, Sir, that I am against the provision contained in Clause 37. It will be highly injurious to the agricultural debtor if he loses the option to return the loan in paddy itself. That is a right which the present law allows him. Why should we deprive him of that right in this measure which is intended for his relief ?

Sir, paddy loan is prevalent particularly in places where there is *punja* cultivation. The loan is taken usually in the months of Tulam and Vrischigam when cultivation operations begin ; and that is just the time when paddy sells at the highest price. The paddy is returned usually during the harvest when the price of paddy is low. Anybody who has had something to do with paddy cultivation or with the purchase and sale of paddy will admit that, between the price of paddy when the loan is usually taken and the price when it is usually repaid, there is always a difference of about 3 or 4 chs. per *para*. Under the present law, it is open to the debtor to repay the loan in cash if that is advantageous to him or to repay it in kind if he thinks that it would be more advantageous to him. The creditor is now bound to accept

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paddy even if the price of paddy is lower than what it was when the loan was advanced. But, under Clause 37, the creditor is entitled to insist on payment of cash in repayment of the paddy loan that he had advanced, and that just at the time when, it being harvest time, it will be easy for the debtor to repay the loan in kind. If the option is given to the debtor to pay off the debt in kind, he will surely pay it off in kind during harvest when he will have plenty of paddy. The creditor also can know when he should expect his loan back. On the other hand, if cash payment is insisted on, naturally, the debtor will not be tempted to sell his paddy when prices are low, and the creditor cannot be sure as to when his transaction will be closed. I do not deny the fact, Sir, that payment in kind gives much scope for the creditor to defraud the debtor. But it is always open to the debtor to pay off the debt in cash, if he suspects any such fraud on the part of the creditor.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : At what rate, according to Mr. Asan, is it open to the debtor to pay back the loan in cash?

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : According to the rulings that are now in force, it is the rate prevailing on the date of the suit or on the date on which execution application is put in.

With these words, I place the amendment before the House for its acceptance.

MR. T. P. VELAYUDHAN PILLAI (*Tiruvalla III*) : I support the amendment. I wish to add one more argument to those already advanced by Mr. Asan. It has been repeated on the floor of this House that this Bill is intended to give relief to the agriculturist debtor. If the Bill is intended to afford relief to the agriculturists alone, why should this provision be made applicable to all? But, so far as this clause is concerned, it has been made applicable to all debtors alike, whether agriculturist or non-agriculturist. Also this provision is to be in force for ever, till it is repealed. Moreover this provision would completely stop the paddy loans for ever. It is obviously against the well settled principle contained in the repeated rulings of the Travancore High Court whereby the debtors are enabled at present to discharge their paddy loans by payment in kind if they so choose. I hope the House will agree to the deletion of this clause at least for these two reasons that I have now urged.

With these words, I support the amendment.

MR. K. R. ELENKATH (*Kalkulam I*) : Sir, I also rise to offer a word in support of the amendment. This clause makes it obligatory on the part of the debtor to pay back the loan in cash. To that extent, it is certainly a disadvantage. In this Bill, we should not put the agriculturist to any disadvantage. The provision will induce the creditor to wait till the price of paddy gets highest so that he can press the debtor to repay just at that time, in order that the debtor may be forced to shell out the maximum amount for the paddy that he has borrowed.

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[Mr. K. R. Elenkath.]

Further, now that we have passed the amendment allowing 9 per cent. interest, there is no reason why the creditor should grudge the option being given to the debtor to pay in cash or in kind as it suits him, especially since that is the present law on this matter.

On these grounds, I also support the motion.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*) : I also support the amendment.

In Travancore, paddy is the chief food-stuff of the people. The people living in towns do not know the value of paddy whereas we living in the country-parts can well appreciate its value. Paddy is the chief product of the country and we sometimes lend it to others. So we ought to get it back in kind itself. The courts also recognise the principle of the return of paddy in kind, because, when a suit is filed, it is incumbent upon the plaintiff to pray for an alternative relief.

When the defendant or the borrower wants to return the loan in paddy itself, the court allows that. Therefore, it is necessary that paddy should be allowed to be returned in kind. Therefore, I support the amendment.

MR. KAYALAM PARAMESWARAN PILLAI (*Additional Head Sirkar Vakil*) : Sir, I shall make the position of the Government clear on this question. I grant that it may be a matter of convenience to the agriculturist to borrow in paddy and return in paddy. But before the Agricultural Debt Redemption Committee, a view was pressed that the borrowing in paddy and giving back in paddy is a source of hardship to the debtor in that there is scope for a good deal of malpractice and victimisation of the debtor. Because the debtors stand in need of borrowing in paddy, they are exploited and subjected to various malpractices, and therefore it was contended that a law should be passed making it practically illegal hereafter to advance any loan in paddy and they wanted the law to be made compulsory that every loan in paddy should be treated as a money loan. That is why you find the clause in the Bill. I can see that borrowing in paddy and giving back in kind may be a source of convenience. But there is a view that this will enslave the debtor to the creditor. I leave the matter entirely to the House.

The amendment was put and carried and Clause 37 was deleted.

Clause 38.

DEPUTY PRESIDENT : We shall proceed to Clause 38 which will hereafter become Clause 37.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*) : Sir, I have another amendment No. 329 A.

DEPUTY PRESIDENT : That is only if 313 A is carried.

MR. V. RAMAKRISHNA PANICKAR (*Kartikapalli II*) : These two amendments are allied to each other. One is a sequence of the other, because the passing of amendment No. 329 A necessitates the passing of Amendment No. 313 A. So I may be allowed to move both these amendments together.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I rise to a point of order in regard to this amendment. According the Chitties Regulation, there is a provision that a *chitty* shall be deemed to have terminated if the foreman fails to pay the prize money before the next instalment of the *chitty*. What Mr. Panikkar wants is that this provision should be repealed or amended. I think that it is quite foreign to the purpose of this Bill and that it does not relate to any of the clauses of this Bill.

The following amendment was ruled out:

In Part V, add the following to the end of the title: -

'and the Chitty Regulation regarding the collapse of chitties.'

MR. T. P. VELAYUDHAN PILLAI (*Tiruvalla III*): Sir, I request permission to alter my amendment to following form:

"*Re-number Part V as Part IV and Section 38 as Section 37.*"

I do not want to move the latter portion of the original amendment.

DEPUTY PRESIDENT: Yes.

MR. T. P. VELAYUDHAN PILLAI (*Tiruvalla III*): Sir, I move the following amendment:

"*Re-number Part V as Part IV and Section 38 as Section 37.*"

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I do not oppose it.

The amendment was put to vote and carried.

MR. K. PADMANABHAN (*Chirayinkil I*): Sir, I move—

In clause 38, add the following as sub-clause (1) (a) (iii) *under clause 48 A*:—

"(iii) *is likely to transfes dishonestly, conceal or remove any part of his property or commit any other act of bad faith in relation to his property.*"

Clause 48 A prescribes certain limitations on the arrest of agriculturists and sub-clauses (1) (*a*) (i) & (ii) prescribe certain exceptions and I am adding one more circumstance to what has been already laid down. He will be liable to be arrested.—

"*if he is likely to abscond or leave the local limits of the jurisdiction of the court, or has after the institution of the suit in which the decree was passed dishonestly transferred concealed or removed any part of his property or committed any other act of bad faith in relation to his property or is likely to transfer dishonestly conceal or remove any part of his property or commit any other act of bad faith in relation to his property.*"

The last mentioned class of persons is also not entitled to be free from arrest.

MR. N. ABDUR RAHIMAN SAHIB (*Nominated*): I second it.

MR. K. KUNJUKRISHNA PILLAI (*Quilon I*): I oppose it.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose this. If what Mr. Padmanabhan apprehends is going to happen, why should the debtor be arrested? Why do you not attach his property and that immediately Sir, I oppose it.

DEPUTY PRESIDENT: Do you press the amendment?

MR. K. PADMANABHAN (*Chirayinkil I*): I do not press it.

The amendment was, by leave, withdrawn.

MR. K. PADMANABHAN (*Chirayinkil I*): I move:—

"*In Clause 38 sub-clause (1) (e), under Clause 48 A, substitute the words "as a person following profession other than agriculture" for the words "on an express statement in writing that he is not an agriculturist" in line 2.*

As amended the Clause will read like this:—

"(1) (e) that the decree was passed on the basis of, or on account of, a transaction entered into by him as a person following a profession other than agriculture".

My object in moving this is to bring the law into conformity with the ordinary practice obtaining in the matter of execution of documents. For instance, in a hypothecation bond executed by A to B, it will be stated that I. A by profession so and so aged and so on. It is not usual in executing documents or entering into other transactions for any one to state that he is not so by profession.

Secondly, if this amendment is not accepted, there is the likelihood of non-agricultural debts of agriculturists being passed for agricultural debts. That is not contemplated to come under the purview of this Regulation. Hence I move this amendment for the acceptance of the House.

MR. K. P. KRISHNA MENON (*Parur*): I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I do not quite see what the purpose of this amendment is. There is nothing in this Clause which will stand in the way of a non-agriculturist borrowing money on the security of his person. Anybody will be willing to advance money on the strength of the security.

The amendment was put to vote and lost.

MR. R. RAMAN PILLAI (*Changanachery* cum *Peermade II*): I move the following amendment:—

"*In Clause 38, delete sub-clause (i) (d) under the Clause 48 A.*"

My object is this. Only debtors who are dishonest are allowed to be arrested. But the debtors who owe money to co-operative societies, even if they are honest, are allowed to be arrested according to the present clause. People who had no credit were given loans and on non-payment they are asked to go to jail. For the debt of one poor man, two other poor persons will have to go to jail; that is the position. That is a hard affair. In case they do not act dishonestly, persons who owe money to co operative societies also should not be arrested

MR. S. J. NAIR (*Nedumangad*): I second the amendment.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vaki*): I oppose the amendment. It must be conceded that seeking to recover money by the arrest of a judgment debtor is a speedy method. That debtors who owe money to co-operative sccieties should not be given any special treatment is the proposition of Mr. Raman

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Pillai. All transactions with co-operative societies depend on mutual trust and friendship. Whenever money is advanced on mere trust, it is but right that there must be some speedy means provided for collecting it. It is not by looking into the properties of the debtor that money is advanced in the case of advances by a co-operative society. It is advanced on his personal security. That being so, in case of non-payment, unless the judgment debtor is put under arrest, the co-operative movement will suffer. It is one of the principles inherent in the spirit of co-operative movement that the parties must proceed on trust. In such cases, arrest is justifiable.

The amendment was put to vote and lost.

MR. T. P. VELAYUDHAN PILLAI (*Tiruvalla III*) : Sir, I move the following amendment:

Delete Sub-clause (2), to clause 38, and substitute the following:—
"Nothing in sub-clause (1) shall apply in the case of any decree for the payment of money, passed on the basis of or on account of any transaction entered into after the commencement of the Travancore Agriculturists' Relief Regulation".

DEPUTY PRESIDENT: Unless the member speaks at the top of his voice, no syllable could be heard. It is raining so heavily.

MR. T. P. VELAYUDHAN PILLAI (*Tiruvalla III*) : Yes, Sir.

The future credit of the country, or at any rate the credit of the debtor of the agriculturist class, will be certainly affected to a considerable extent by this enactment. The agriculturist debtors will not be able to carry on their business in future without borrowing money. By proposing an amendment of this nature, it will only be an inducement for creditors to give loans to agriculturists. This amendment gives a hope to the creditors that at least in regard to the future debts they will be able to realise the debts by effecting the arrest of the debtors. If the honourable members of the House really desire to help the agriculturists of the country, acceptance of this valuable amendment is the only solution. Hence I move the amendment for the acceptance of the House.

MR. A. S. DAMODARAN ASAN (*Mavelikara*) : I second it.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*) : I oppose it. It is a matter of opinion whether the provision for arrest of debtors would advance agricultural credit or retard it.

DEPUTY PRESIDENT: But you express your own opinion.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*) : Yes Sir. My friend argued that the acceptance of the amendment now proposed by him would enhance future agricultural credit. It is for that reason I oppose. I myself have moved an amendment to delete sub-clauses (2) and (3) under the Clause 48 A. There is an opinion gaining currency throughout the world that an agriculturist debtor could be arrested only on certain conditions, under normal conditions he is entitled to come with others. I think, the provision now proposed by Mr. Velayudhan Pillai is a retrograde step and therefore I oppose it.

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MR. KAYALAM PARAMESWARAN PILLAI (*Additional Head Sirkar Vakil*): I agree with Mr. Velayudhan Pillai in thinking that facility for agricultural credit will be considerably enhanced if there is a provision that the agriculturists may be arrested. Perhaps there may be difference of opinion. But I am quite prepared to leave the matter entirely to the House to decide whether there should be a provision for arrest for non-payment of debts incurred in future. Perhaps, this provision may collide with something that has been passed. Anyhow if the House is agreeable to this amendment, I have no objection to adopt it, and make proper changes at the third reading.

DEPUTY PRESIDENT: Because it is raining heavily, I shall repeat what the Law Member stated. The Government have not made up their mind to take any particular stand on this amendment. Mr. Velayudhan Pillai has moved this amendment because, he thinks it is ultimately for the benefit of the agriculturist. Mr. Panickar rested his case on the general principle that throughout the world imprisonment for debt is being discontinued.

The amendment was put to vote and lost.

MR R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I demand a poll.

A poll was taken with the following result.

AYES—9.

1	Mr. N. Abdur Rahiman Sahib	5	Mr. K. P. Krishna Menon
2	Miss Hepzhibah Gnanasikamoney	6	,, K. C. Karunakaran
3	Mr. S. Chattanatha Karayalar	7	,, R. Sambasiva Aiyar
4	,, T. S. Jayantan Namputiri	8	,, A. S. Damodaran Asan
		9	,, T. P. Velayudhan Pillai

NOES—28.

1	Mr. T. K. Alexander	17	Mr. K. Madhavan
2	Rao Sahib S. Parameswara Aiyar	18	,, R. Raman Pillai
3	,, M. Mahomed Haneef	19	,, P. K. Thomas
4	,, S. J. Nair	20	,, K. Kunjukrishna Pillai
5	,, A. Thanu Pillai	21	,, Puthupally S. Krishna Pillai
6	,, K. R. Elenkath	22	,, Pacode A. Narayana Pillai
7	,, Antony George	23	,, N K. Krishna Pillai
8	,, J. M. Joseph	24	,, A. EaswaraPillai (*Kalkulam II*)
9	,, P. C. Kuriyan	25	,, R Sivaraman Nair
10	,, S. Nilakanta Pillai	26	,, Edavanatt S. Padmanabha Menon
11	,, N. John Joseph	27	,, Pottayil S. Krishna Panickar
12	,, T. C. Joseph	28	,, G. Nilakantan
13	,, T. T. Kesavan Sastri		
14	,, K. Mahomed		
15	,, K. M. Krishnan		
16	,, K. M. Kuriakose		

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NEUTRALS—17.

1	Mr. K. C. Abraham	9	Mr T. C. Thommen
2	,, V. T. Chacko	10	,, K. N. Kesava Pillai
3	,, P. C. Narayanan Bhattatiripad	11	,, C. V. Chandrasekharan
4	,, K. Padmanabhan	12	,, G. B. E. Truscott
5	,, S. Tiraviam Nadar	13	,, Kayalam Paramesvaran Pillai
6	,, N. E. Varughese	14	,, K. George
7	,, M. Sivatanu Pillai	15	,, C. O. Madhavan
8	Rao Bahadur Dr. N. Kunjan Pillai	16	,, M. Govinda Pillai
		17	,, N. K. Padmanabha Pillai

The amendment was declared lost.

MR. K. PADMANABHAN (*Chirayinkil I*): Sir, I beg to move the following amendment:—

In Clause 38, sub-clause (2) under the clause 48 A" line 5, insert the words "upon notice issued to him" between the words "the Court" and "a declaration", and in line 13, insert the words "or if he has not paid up the decree amount within such time as allowed by the court under this sub-section" between the words "undertaking" and "the Court".

Sub-section (2) of clause 38 says:

"Nothing in sub-section (1) shall apply in the case of any decree for the payment of money passed on the basis of or on account of, any transaction entered into before the commencement of the Travancore Agriculturists' Relief Regulation,"

In the succeeding sentence, the sub-clause enumerates certain conditions which have to be satisfied by the debtor. When my amendment is accepted, it would read like this:—

"But in the execution of any such decree, the court shall not order the arrest or detention in the Civil Prison of any agriculturists if he submits to the court upon notice issued to him a declaration in writing that he is not able....."

That is the first part. According to the provision in this Bill, it would appear, that as soon as an execution application is presented, the judgment debtor of his own accord should go to the court and submit a declaration in writing that he is not able without time being allowed to pay up the decree amount. If the debtor is arrested and brought before the court, then also he is entitled to put in that declaration.

TO MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): What will happen if he makes a declaration even without notice issued to him ?

MR. K. PADMANABHAN (*Chirayinkil I*): If no notice is issued to him he is not in a position to go there.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That is not my question. Suppose a declaration is made without any notice issued to him.

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MR. K. PADMANABHAN (*Chirayinkil I*): Then there is no harm. He is at liberty to appear in the court before he is arrested. But that may not be possible unless he gets notice. If no notice is issued to him, the judgment debtor may not be able to put in the declaration. It is to save him from that trouble that I am inserting this amendment and saying that the court should issue a notice to him.

Then with regard to the second part of the amendment. When my amendment is accepted, the latter part of the sub-section would read as follows:

> 'If he has not submitted such a declaration or such list or has not given such undertaking or if it is proved at any time to the satisfaction of the court that the list is incomplete or incorrect in material particulars or that he has alienated or encumbered any of such properties against the undertaking or if he has not paid up the decree amount within such time as allowed by the Court under this sub-section the Court may order his arrest or detention in the civil prison.'

According to the provision contained in this Bill, it would appear that it is enough if the debtor merely makes a declaration in the prescribed form. What is the good of asking him to give an undertaking in writing that he will pay the amount within a specified time unless he pays up that amount within the prescribed time? If he does not make payments at such times specified by the court, he should be liable to be arrested. The provision in this Bill, is, as it is, absolutely meaningless. It is enough if he submits a declaration in writing that he is not able without time being allowed to pay up the decree amount and also a list of his entire properties. How is it possible for the court to realise the amount? How is it possible for the creditor to get his amount. So, I submit that my amendment is very useful to the provision. Unless that is also inserted, the sub-clause as a whole will become absolutely useless.

MR. A. THANU PILLAI (*Trivandrum—Rural*): After giving the undertaking, suppose he alienates the property?

MR. K. PADMANABHAN (*Chirayinkil I*): There is provision in this clause to prevent alienation of properties. What is the good of giving time to him?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) I second it.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I oppose the amendment. With regard to the first part of the amendment, *viz.*, that the words "upon notice issued to him" being inserted, it is firstly unnecessary and secondly injurious. It is injurious because it would suggest that he cannot make a declaration unless a notice is issued to him. If he makes a declaration in the Court without a notice issued to him, that declaration would be invalid. Therefore it is injurious to the debtor.

In regard to the first part of the amendment, I would point out that sub-clause (3) provides for it.

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"Whenever the court has reason to suspect that any person against whom an application for arrest or detention in the civil prison in the execution any decree for the payment of money is made is an agriculturist, the court shall before granting the application give him an opportunity of showing cause why he should not be committed to prison".

So, when the court has any reason to suspect, it will not allow the debtor to be arrested without notice.

MR. K. PADMANABHAN (*Chirayinkil I*): How is the Court to know whether the man is an agriculturist or not?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That can be known from the application made and from other things.

The object of making a declaration and of furnsshing a list of the properties is that the court and the creditor should be made aware of all the properties of the debtor. If the creditor wants, he can attach all the properties. If the creditor is doubtful of recovering the amount, he may attach all the properties.

MR. K. PADMANABHAN (*Chirayinkil I*): Why should he state that, without time being given, he cannot pay it?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): So that all his properties may not be brought under attachment.

The amendment, part by part, was put to vote and declnred lost.

The question that Clause 38 (renumbered as Clause 37), stand part of the Bill was put and carried.

The Clause was added to the Bill.

Clause 39.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I beg to move the following amendment:—

"*Delete the whole of Part VI*"

MR. S. J. NAIR (*Nedumangad*): Sir, I rise to a point of order. The Hon'ble member's amendment is to delete the whole of Part VI. It does not specify any Clause or Clauses in the Bill. So it would be out of order.

DEPUTY PRESIDENT: Mr. Sambasiva Aiyar's motion is out of order.

No. Excuse me. The wording is "the whole of part VI". Part VI has only one Clause. Therefore Mr. Sambasiva Aiyar is in order.

MR. C. V. CHANDRASEKHARAN (*Ag. Director of Public Instruction*): I rise to another point of order. There is no Part VI at present.

MR. A. THANU PILLAI (*Trivandrum-Rural*): Sir, I rise to a substantial point of order. In the light of the ruling that the Chair has already given in another case the heading "mortgage and lease back" does not form part of the Clause. So the motion is out of order.

DEPUTY PRESIDENT: Mr. Thanu Pillai will realise that a ruling is based upon certain facts. One ruling does not bind another when facts are different.

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MR. A. THANU PILLAI (*Trivandrum-Rural*): That I fully see. I rely upon that as an authority for my point of order. Can Mr. Sambasiva Aiyar move an amendment to the effect that Part VI be deleted seeing that Part VI is composed not only of one clause, but one clause plus something else? They are two distinct things. So the amendment is not in order.

MR. A. S. DAMODARAN ASAN (*Mavelikara*): A point of order. The Chair has already permitted Mr. Sambasiva Aiyar to make his motion. Now Mr. Thanu Pillai wants to reopen that question. Is it in order?

MR. A THANU PILLAI (*Trivandrum-Rural*): The Chair allowed him not after the point of order was raised.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I am in possession of the House and the Chair has permitted me to move.

DEPUTY PRESIDENT: I am much obliged to the solicitude shown to the Chair by some of the honourable members. I do not propose at this part of the day, after having been sitting for a long time doing important business, to give an elaborate ruling. What has transpired here is in the memory of all. This part has only one clause. The ruling that was given some time back was that the title to the part is no clause. That is all. The honourable member who raised the point has therefore misunderstood the scope of the ruling and its effect.

MR. A. THANU PILLAI (*Trivandrum-Rural*): Another point of order. Can an amendment be moved for the deletion of the clause? Has not he to oppose when it is put to the House?

DEPUTY PRESIDENT: There again the difficulty arises in this way. Mr. Thanu Pillai has imported into this amendment conditions which ought to prevail under alternative circumstances.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): In the original Bill as drafted by the Law Member there was no such provision. This provision has been newly incorporated by the Select Committee. The intention by the parties to a transaction is seen from the document which they agreed to and executed. To go further and say that there is another intention, a concealed intention, an intention which could be found out only after taking further evidence and try to act upon that intention, I submit, Sir, is a principle which should never be accepted by this House. It is well known that, whenever parties enter into a transaction, all their intentions, whatever they are, are embodied in the document, the document which evidences the contract. The idea of this section is to reopen the transaction which on the face of it is a usufructuary mortgage and try to allow one party to the contract to prove that it is not a usufructuary mortgage but something else. My submission, Sir, is if the law of the land now permits such a course to be done, well, the parties can do it. If the law does not permit the parties to do it, it is wrong to enact a new law and permit a party to reopen the transaction and to enable him to prove that his intention was something other than what is stated in the document. This, Sir, would interfere with vested right, to a very large extent. In the practical application of this, Sir, I would submit there is very great difficulty. So I request, Sir, this amendment may be accepted.

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MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*): ഞാൻ ഈ ഭേദഗതിയെ അനുകൂലിക്കുന്നു. ഒറിയാധാരങ്ങളെ പൂണ്ടിപ്പണയമായി മാറണമെന്നുള്ള തത്വത്തെ അടിസ്ഥാനപ്പെടുത്തിയാണ് ഈ വകുപ്പു സെലക്ട് കമ്മിറ്റിക്കാർ കൊണ്ടുവന്നിരിക്കുന്നതു്. വസ്തുഈടു കൊടുത്തു പണം വാങ്ങുന്നയാൾ വസ്തു കൈവശം വിടുന്നതിനുള്ള വൈമനസ്യംകൊണ്ടു പാട്ടമായി കിട്ടണമെന്നു ഉത്തമർണ്ണനോടു ആവശ്യപ്പെടുകയും അതനുസരിച്ചു ഒരുപകാരം ഉത്തമർണ്ണൻ ചെയ്കയും ചെയ്യുന്നു. അതിലേക്കുള്ള ഒരു ശിക്ഷയായിട്ടാണ് ഈ വകുപ്പു പരിണമിച്ചിട്ടുള്ളതെന്നു പറയാതിരിക്കുവാൻ നിവൃത്തിയില്ല. സ്ഥാവരവസ്തുക്കളുടെ ഉടമസ്ഥാവകാശത്തെ ഈ നിയമംകൊണ്ടു അസ്ഥിരപ്പെടുത്തുന്നതു ഒരിക്കലും സാധൂകരിക്കത്തക്കതല്ല.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): അധമർണ്ണനു താല്പര്യമാണെങ്കിൽ പണയം സ്വീകരിക്കുന്നതുകൊണ്ടു് ആക്ഷേപം എന്താണ്?

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*), അധമർണ്ണനിൽനിന്നും ഉത്തമർണ്ണൻ പാട്ടമാണു വാങ്ങിക്കുന്നതു്. പാട്ടക്കുടിശിഖവരുത്തുന്നപക്ഷം വസ്തു ഒഴിപ്പിക്കാൻ പാടില്ലാ എന്നു പറയുന്നതു ന്യായമല്ല.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): പണയാധാരം ഒഴിയുന്നതിനോ ഒറി ഒഴിയുന്നതിനോ?

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*): ഒറി അസ്ഥിരപ്പെടണമെങ്കിൽ പണം കൊടുത്തുതീർക്കണം.

MR. R. RAMAN PILLAI (*Changanassery cum Peermade II*). ഒറിയാധാരത്തിന്റെ ഒറിയത്വം കിട്ടിയാൽ ഒഴിഞ്ഞുകൊടുത്താലും തരക്കേടില്ലല്ലോ.

MR. T. S. JAYANTAN NAMBOOTIRI (*Travancore Jenmies, North*): പണം കിട്ടിയാൽ അവകാശം ഒഴിയുന്നതിൽ വിരോധമില്ല. ഈ വകകാര്യങ്ങളെപ്പറ്റി കൂടുതൽ പരിജ്ഞാനമുള്ളവരും വിദ്യാസമ്പന്നരുമായ ആളുകളാണ് അങ്ങിനെ എഴുതിക്കൊടുത്തിട്ടുള്ളതു്. അവർ ഒറിയാധാരം പൂണ്ടിപ്പണയാധാരമാണെന്നുള്ള സങ്കല്പത്തിലാണ് എഴുതികൊടുത്തിട്ടുള്ളതെന്നു വിചാരിക്കേണ്ട ആവശ്യമില്ല. ആധാരവാചകത്തിനു പ്രാമാണ്യം കല്പിക്കുകയല്ലാതെ അനാവശ്യമായി ഉദ്ദേശത്തെപ്പറ്റി അന്വേഷിക്കുന്നതും എന്തിനാണെന്നു മനസ്സിലാകുന്നില്ല. ഈ വകുപ്പു കൊണ്ടുവന്നുചേരാവുന്ന ബുദ്ധിമുട്ടുകളെപ്പറ്റി അവതാരകൻ വിസ്തരിച്ചു പ്രതിപാദിച്ചിട്ടുള്ളതിനാൽ ഞാൻ കൂടുതലായി ഒന്നും പ്രസ്താവിക്കുന്നില്ല; ഞാൻ ഭേദഗതിയെ ശക്തിയായി അനുകൂലിക്കുന്നു.

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MR. A. THANU PILLAI (*Trivandrum—Rural*) : Sir, I oppose the amendment. The clause is to this effect. If any transaction which purports to be a usufructuary mortgage (*otti*) is proved to have been only a hypothecation, such transaction shall be treated as hypothecation. Now, the objection raised by Mr. Sambasiva Aiyar and the honourable member who seconded him is—

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I put this question, whether according to the law of mortgages at present it is open to a party to contend that the mortgage is not a mortgage but only hypothecation?

MR. A. THANU PILLAI (*Trivandrum-Rural*): Whether it is competent or not for a party to raise any objection, what is sought to be provided in this clause is that a transaction which is really a hypothecation should be treated as such even though the document apparently says that it is a usufructuary mortgage.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I would like to know from the member whether, according to the law as at present, there is any difficulty for the party to prove that.

MR. A. THANU PILLAI (*Trivandrum-Rural*): If there is no difficulty for the party to prove it, let us make it clear in the case of agriculturists who shall have the clear facility of establishing their case before the court.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): If the law allows him to do it, why should we have this section?

MR. A. THANU PILLAI (*Trivandrum-Rural*) : If the law allows him, what is the harm in making it clear?

All that is required is to recognise the real contract between the parties and to give effect to that. If, in any particular case, it is shown that the mortgage was really intended to be a mortgage and not a hypothecation, this clause will have no effect. If, on the other hand, what was really intended was a hypothecation, we hereby give the party a right to establish that. I fail to see what real objection there can be. We have been here for the last several days to maintain the sanctity of contract. Let us maintain that in this case also. What is the harm? If the mortgage is shown to be a hypothecation, that can be proved. Beyond that we do not want any change in the law.

Sir, there is substantial case for the retention of this clause as it is. Suppose a property which yields Rs. 500 annually is given as security for a loan and suppose the interest on the loan is only Rs. 100. After executing the lease, the mortgagee agrees to take back Rs. 100 per annum from the mortgagor. Now after having entered into that transaction, the mortgagee is in a position to sue for the recovery of the property in case default is made in payment of interest; of course owing to economic depression default is more regular than payment. The mortgagee should only be safe-guarded in so far as money is concerned and interest on the money which alone forms the subject matter of the contract. So I very strongly oppose the amendment.

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Sir, whatever apprehensions Mr. Sambasiva Aiyar may feel, I think that the clause, as it stands and as it is worded, is not open to any objection. The first words in the clause to which I will draw the attention of those who support the amendment is this. If any, transaction only purports to be a usufructuary mortgage and if that is satisfactorily made out and if it is further proved that it was intended to be only a hypothecation, it should be treated as a hypothecation.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): We will take a case where the mortgage is for Rs. 25,000 and property leased to the mortgagor and suppose interest amounting to Rs. 6,500 has been in arrears for 3 years; and it is contended by the debtor that it was intended only as a hypothecation when the creditor sues upon the lease deed If the court holds it is a hypothecation, what remedy has the creditor?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vaki*): The creditor will file a suit for that money.

MR. R SAMBASIVA AIYAR (*Kunnatnad II*): In the meanwhile the original mortgage is barred; what is the remedy? As it is, it may not be barred. But if in the meanwhile it is treated as a hypothecation, what will the creditor do?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If it is barred, he will have to thank himself. If it is *proved* to be a hypothecation, he must file a suit in 12 years. Supposing for instance that 12 years have elapsed as a matter of fact, that will be one grcund for showing that it was not really intended to be a hypothecation. If it is intended to be a hypothecation, it can be presumed that the creditor would have filed the suit within 12 years. The fact that he did not file the suit would show that it is *not intended* to be a hypothecation assuming that the failure to due was *bona fide*.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): If it is a transaction outstanding for 25 years, has the creditor any remedy?

DEPUTY PRESIDENT: The member cannot put a series of questions like that.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I must be given at least an opportunity to reply.

DEPUTY PRESIDENT: You may put the question in a very brief form.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I put it to the Law Member whether, in a case where a transaction has been outstanding for over 25 years, if the court holds that the intention of the parties was that it should only be a hypothecation, the creditor has a remedy.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): In such cases it will not be taken that it was intended to be a hypothecation only.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*) Is there anything in the section to prevent a court from holding that it is only a hypothecation?

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MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): There is nothing to prevent the court except a sense of law and justice.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): May I know whether, according to the sense of law and justice which prevails in our courts of law, these transctions, although they may be held to be hypothecations, are still treated as usufructuary mortgages?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That may not be quite a correct way of putting it. The correct way of putting it would be that, if neither party objects, the court may hold so.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): With regard to that statement, may I know whether it is not permissible for courts even now to treat such transactions as hypothecations?

DEPUTY PRESIDENT: I disallow that question because the question is "whether it is not". That means the member knows the answer.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I obey the ruling of the Chair.

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): As the Clause stands, it only tries to carry out the intentions of the parties; and as for the apprehensions expressed by Mr. Sambasiva Aiyar, if any amendments have been tabled to remove those apprehensions by, say, an explanation, I should have accepted it. For instance, an explanation could be proposed to the effect that nothing in this Section shall be deemed to affect a case which would be barred by limitation if it were treated as a hypothecation. As the wording stands at present, it only seeks to carry out the intentions of the parties.

MR. N. ABDUR RAHIMAN SAHIB (*Nominated*): If it is a hypothecation bond, should not the hypothecatee pay income tax on the interest that he has obtained?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I believe he has to pay.

MR. A EASWARA PILLAI (*Kalkulam II*): May I know whether the period of limitation is the same for *otti* as well as for lease?

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): It is not the same.

MR. PACODE A. NARAYANA PILLAI (*Vilavankod*): Are we now studying for a law examination here? (*Laughter.*)

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): I protest against that statement, Sir.

DEPUTY PRESIDENT: I should think that Mr. Sambasiva Aiyar's protest is a legitimate manner of expressing displeasure at the suggestion made by the Honourable Member for Vilavankod; because, every Honourable Member puts questions here with a very high sense of responsibility. (Mr. S. J. Nair: *Hear, hear.*) There may be two opinions about the same point.

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The amendment was put to vote and lost.

MR. A. THANU PILLAI (*Trivandrum—Rural*): I demand a poll.

MR. K. PADMANABHAN (*Chirayinkil I*): On a point of order, Sir, as to whether poll can be demanded at this stage, after the result of the voting has been announced.

DEPUTY PRESIDENT: Please leave such things to the discretion of the Chair. I am allowing the poll.

A poll was taken, and the House divided as follows:

AYES—6.

1 Mr. P. C. Narayanan Bhattatiripad
2 ,, K. P. Krishna Menon
3 ,, T. S. Jayantan Namputiripad
4 Mr. K. Padmanabhan
5 ,, R. Sambasiva Aiyar
6 ,, M. Sivatanu Pillai

NOES—44.

1 Mr. K. C. Abraham
2 ,, V. T. Chacko
3 ,, S. J. Nair
4 ,, A. Thanu Pillai
5 ,, Antony George
6 ,, P. C. Kuriyan
7 ,, N. John Joseph
8 ,, T. T. Kesavan Sastri
9 ,, K. Mahomed
10 ,, K. Madhavan
11 ,, P. K. Thomas
12 Rao Bahadur Dr. N. Kunjan Pillai
13 Mr. K. N. Kesava Pillai
14 ,, G. B. E. Truscott
15 ,, K. George
16 ,, N. K. Padmanabha Pillai
17 ,, Puthupalli S. Krishna Pillai
18 ,, Pacode A. Narayana Pillai
19 ,, A. Easvara Pillai (*Kottarakara*)
20 ,, Kainikkara M. Padmanabha Pillai
21 ,, Pottayil S. Krishna Panikkar
22 ,, T. P. Velayudhan Pillai
23 Mr. T. K. Alexander
24 ,, M. Mahomed Haneef
25 Mss Hepzibah Gnanasikbamani
26 Mr. K. R. Elenkath
27 ,, J. M. Joseph
28 ,, S. Nilakanta Pillai
29 ,, T. C. Joseph
30 ,, K. M. Krishnan
31 ,, K. M. Kuriakose
32 ,, R. Raman Pillai
33 ,, N. E. Varughese
34 ,, T. C. Thommen
35 ,, C. V. Chandrasekharan
36 ,, Kayalam Parameswaran Pillai
37 ,, M. Govinda Pillai
38 ,, K. Kunjukrishna Pillai
39 ,, A. S. Damodaran Asan
40 ,, N. K. Krishna Pillai
41 ,, R. Sivaraman Nair
42 ,, Edavanatt S. Padmanabha Menon
43 ,, V. K. Velappan Nair
44 ,, G. Nilakantan

NEUTRALS—6.

1 Mr. N. Abdur Rahiman Sahib
2 Rao Sahib S. Parameswara Aiyar
3 Mr. S. Chattanatha Karayalar
4 Mr. K. C. Karunakaran
5 ,, S. Thiraviam Nadar
6 ,, A. Easwara Pillai (*Kalkulam II*)

The amendment was lost.

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MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, I beg to move the following amendment:

Add the following Proviso to Clause 39:—

"*Provided that this section shall not apply to any mortgage* (*Otti*) *made for securing any amount exceeding Rs. 5,000*".

DEPUTY PRESIDENT: Has not that question been decided by the House already, in more than one form?

MR. POTTAYIL S. KRISHNA PANIKKAR (*Shertala II*): On a point of order, Sir. The House has already expressed its definite decision on the question of mortgage. This amendment is therefore not in order.

DEPUTY PRESIDENT: What is the use of repeating what the Chair has stated? Why do you paint the lily?

MR. POTTAYIL S. KRISHNA PANIKKAR (*Shertala II*): I did not hear what the Chair said, Sir,

MR. KAYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The previous amendment, which the House has already disposed of, was merely for deleting the provision. The House said that it need not be deleted. All the same, the House may allow the provision to be modified; that is the object of this amendment. The amendment, therefore, is in order.

DEPUTY PRESIDENT: Mr. Sambasiva Aiyar may proceed with his argument on the amendment.

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Sir, there are cases in which, although the real intention of the parties was to treat the transaction as a hypothecation, the debtor should certainly be deemed to have agreed to allow the creditor also the right to sue on the lease deed alone, for the sake of realising the interest. Therefore, I submit, that, at least in cases where the amount exceeds Rs. 5,000, the creditor need not be bound hand and foot and that he may be allowed to sue on the lease deed alone for the purpose of realising the interest. It cannot be denied, Sir, that, when two deeds were executed instead of one hypothecation deed, the debtor agreed that his properties might be recovered on the lease deed alone and the creditor really expected that he could do so. Why should we defeat such a legitimate expectation? In the case of small amounts, amounts below Rs. 5,000, it may not be difficult for the creditor to find out the necessary money for suing on both the mortgage and the lease. But, certainly in the case of transactions exceeding Rs. 5,000, it will be difficult for the creditor to find out even the necessary money for suing on both the mortgage and the lease together. I therefore appeal to the House to exempt at least transactions for over Rs 5,000 from the operation of this Clause.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala*): Does the injustice lie in the amount?

MR. R. SAMBASIVA AIYAR (*Kunnatnad II*): Yes.

MR. T. S. JAYANTAN NAMPUTIRIPAD (*Travancore Jenmies, North*): I second the amendment, Sir.

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MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*): I oppose the amendment. Mr. Sambasiva Aiyar argued that the creditor must be allowed to sue for the interest alone at least in cases where the amount exceeds Rs. 5,000. It is not clear how the hardship arises only in cases where the amount exceeds Rs. 5,000.

Sir, the Clause, as it is, has been incorporated in the Bill by a Select Committee composed of about one-third of this House. I am fortified in my opposition to this amendment by the opinion of such a strong Select Committee. The Debt Redemption Committee have, in their investigation, been able to find out that there are, in north Travancore as well as in south Travancore (Mr. M. Sivatanu Pillai: *Question.*) transactions which, while purporting to be mortgages, are really only hypothecations and intended to be only such by the parties.

MR. PACODE A. NARAYANA PILLAI (*Vilarankod*): There are such transactions in south Travancore, Sir.

MR. POTTAYIL S. KRISHNA PANICKAR (*Shertala II*) One of the objects of the form of these transactions is to evade the income tax payable on the interest that may be derived if they are treated as hypothecations. Further, if they are called hypothecations, the creditor cannot sue for interest alone, and, when he sues for interest and principal, he can get only simple interest. On the other hand, where a mortgage deed and a lease deed have been executed, as and when interest falls due, the creditor can sue on the lease deed and get interest, which would mean that, in effect, he could be getting compound interest.

Further, in no other clause of a similar nature do we find an amount prescribed—as is proposed to be done by this amendment—for a rule of law to take effect.

With these words, I oppose the amendment.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): I also oppose the amendment. I do not think, Sir, that this House will take Mr. Sambasiva Aiyar seriously, since he has almost fallen into the habit of moving such amendments——

MR. M. SIVATANU PILLAI (*Torala*): Is the member in order, Sir?

DEPUTY PRESIDENT: Please wait, Mr. Sivatanu Pillai; let me hear him in full. Let him finish the sentence.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): This is not the first instance in which Mr. Sambasiva Aiyar, when he found that he has failed to persuade the House to delete provisions which he does not want, has attempted to persuade the House to agree to certain pecuniary limits for the operation of the provisions to which he objects.

DEPUTY PRESIDENT: That sentence of yours is perfectly in order, but the previous one that nobody should take Mr. Sambasiva Aiyar's argument seriously is not quite good.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): I said that the House is not likely to take Mr. Sambasiva Aiyar seriously in this case because in other instances also he has been repeating these tactics. (*Laughter.*)

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DEPUTY PRESIDENT: I think that changes the meaning considerably.

MR. EDAVANATT S. PADMANABHA MENON (*Shertala I*): This is a very vital matter affecting many lakhs of people in North Travancore. So many transactions relating to immovable property are daily taking place and in this particular kind of transaction the agriculturist debtor is in a very unfavourable situation because the creditor says.—

"*After all the whole property is in your possession. To evade income tax we fix up this kind of document; you retain the property and you just include some items of property because you do not stand to lose*".

If the interest is regularly paid, the transaction is a safe one and the whole property rests with the owner.

Sir, Mr. Sambasiva Aiyar, towards the close of a long and arduous session in regard to this important Bill, wants to give at least a substantial prick to North Travancore; and I suppose honourable members of this House will not walk into the net that has been cast by Mr. Sambasiva Aiyar.

DEPUTY PRESIDENT: It is a bit overstated.

The amendment was put to vote and declared lost.

MR. T. P. VELAYUDHAN PILLAI (*Tiruvalla III*): Sir, I move the following amendment:

"*Renumber Part VI as Part V and Section 39 as Section 38.*"

MR. A. S. DAMODARAN ASAN (*Mavelikara*): I second it.

The amendment was put to vote and declared carried.

The question that clause 39, renumbered as 38, do stand part of the Bill was then put and carried.

Clause 38 was added to the Bill.

MR. K. C. ABRAHAM (*Kottayam II*): Sir, the amendment standing in my name, was proposed on an apprehension of a contingency, which apprehension has now become a misapprehension. Therefore I do not propose to move the following amendment:—

Add the following as Part VII:—

"Notwithstanding any thing hereinbefore contained and subject to the law in force regulating interest, if, in respect of any debt the debtor within one year of the passing of this Regulation makes a tender or deposit in court of the principal amount outstanding together with interest thereon, if any, at the contract rate till the 1st Chingom 1105 and thereafter calculated at 4 per cent. per annum or half the contract rate, whichever is higher, till the date of tender or deposit, the creditor shall be bound to receive the same so tendered or deposited in full discharge of the amount due to him".

PREAMBLE.

The question that the preamble stand part of the Bill was put and carried.

The preamble was added to the Bill.

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TITLE.

The question that the title stand part of the Bill was put and carried.

The title was added to the Bill.

DEPUTY PRESIDENT : We have now reached the final stage in the second reading of the Bill.—

RAO BAHADUR DR. N. KUNJAN PILLAI (*Chief Secretary to Government*) : Sir, I wish to make a statement. Some amendments to this Bill have been carried and Government want some time to consider these amendments. They hope that, in the course of the next three or four days, they may be able to come to a decision on these amendments and that it may be possible to take up the third reading of the Bill at a meeting of this House which may be held —I do not say it is going to be held—on any of those days intervening between the Joint Session of both the Houses for the presentation of the Budget and the general discussion of the Budget in this House. Government will consider the question carefully and come to a decision. I only want to inform the honourable members now of the possibility of a meeting of this House being held on any day between the Joint Session and the general discussion of the Budget for the third reading of this Bill, so that the honourable members may come prepared if necessary. I think it may be possible to give definite notice of such a meeting on the day of the Joint Session or even a day earlier.

THE TRAVANCORE COMPENSATION FOR IMPROVEMENTS BILL.

DEPUTY PRESIDENT : We shall now proceed to the next business, namely, the third reading of Mr. R. Raman Pillai's Compensation for Improvements Bill,

MR. P. C. KURIYAN (*Kottayam I*) : I rise to a point of order. When we were summoned to this Session of the Assembly, it was stated in the notice that it was convened to discuss the second reading and the further stages of the Agriculturists' Relief Bill, the Co-operative Societies Bill and the Preservation of Ancient Monuments Bill.

DEPUTY PRESIDENT : What is the rule you rely upon ?

MR. P. C. KURIYAN (*Kottayam I*) : When those two Bills are not taken into consideration—.

DEPUTY PRESIDENT : You have already explained your position and I asked you which is the rule you rely upon.

MR. N. E. VARUGHESE (*Tiruvalla I*) : I refer to para 24 at page 15 of the Assembly Manual to state that the third reading of the Compensation for Improvements Bill cannot be gone through today. In the first place, there is no agenda. There is no previous notice except an announcement made yesterday by the Chief Secretary to Government that, if there is time after the second reading of the Agriculturists' Relief Bill was over, the third reading of Mr. Raman Pillai's Bill will be taken up.

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